

2461
No. 2461

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United States
Circuit Court of Appeals
For the Ninth Circuit

FRANK D. COOPER,
Defendant and Appellant,

VS.

UNITED STATES OF AMERICA,
Complainant and Appellee.

GEORGE HEATON,
Defendant, Not Joining in Appeal.

TRANSCRIPT OF RECORD.

Upon Appeal from the United States District
Court for the District of Montana.

JAMES A. WALSH,
Solicitor for Appellant, Helena, Montana.

HON. B. K. WHEELER, U. S. Attorney,
Solicitor for Appellee, Helena, Montana.

Filed

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F. D. Monckton,
Clerk.

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*In the District Court of the United States, in and
for the District of Montana.*

UNITED STATES OF AMERICA,

Complainant,

vs.

No. 948.

FRANK D. COOPER and GEORGE HEATON,

Defendants.

BE IT REMEMBERED, that on the 7th day of
December, 1909, complainant filed its Bill of Com-
plaint herein, in the words and figures following,
to-wit:

In the Circuit Court of the United States, Ninth Circuit, District of Montana.

UNITED STATES OF AMERICA,

Complainant,

vs.

FRANK D. COOPER and GEORGE HEATON,

Defendants.

IN EQUITY.

BILL OF COMPLAINT.

To the Honorable, the Circuit Court of the United States, Ninth Circuit, in and for the District of Montana:—

The United States of America, by George W. Wickersham, Attorney-General of the United States, and James W. Freeman, United States Attorney for the District of Montana, brings this bill of complaint against Frank D. Cooper, a resident of the State of Montana, and George Heaton, a resident of the Southern District of the State of Iowa, the defendant herein, and thereupon your orator complains and says:

FIRST:

That on and prior to the 1 day of December, A. D. 1898, your orator was the owner in fee simple of those certain public lands situated in the state and district of Montana and within the Helena Land District, and now within the land district of which the land office is at Great Falls, Montana, and more

particularly described as follows: The North half of the northwest quarter of section Fourteen, and the east half of the northeast quarter of section fifteen, in township nineteen north range three west of the principal Montana Meridian, containing one hundred and sixty acres of land, situated, lying and being in the county of Cascade, state and district of Montana, and within the jurisdiction of this court.

That on the said 1 day of December, A. D., 1898, one Charles Gilbert, under and by virtue of the provisions of Section 2289 of the Revised Statutes of the United States, made and filed in the local land office of the United States, at Helena, in the State and District of Montana, his application No. 9785, to enter as a homestead the lands hereinabove described.

SECOND:

That at the time of the filing by the said Charles Gilbert, of his said homestead application No. 9785, to enter the above described lands and premises, and contemporaneously therewith, the said Charles Gilbert, likewise filed in the said local land office of the United States, as required by law, his affidavit and statement in writing under oath, in which, among other things, he stated and deposed that his said application to enter said land as a homestead was honestly and in good faith made for the purpose of actual settlement and cultivation, and that he would faithfully and honestly endeavor to comply with all the requirements of law as to said land, and the residence and cultivation necessary to acquire

title to said lands so applied for, and that he had not applied and did not apply to enter said lands for the purpose of speculation, but in good faith to make a home for himself. That thereupon the said Charles Gilbert then and there paid to the Receiver of the local land office of the United States, at Helena, Montana, the sum of sixteen dollars, the same being the proper and legal fee then and there due and payable to the said Receiver upon the filing of said application aforesaid. Whereupon the said Receiver of the said local land office then and there issued and delivered to the said Charles Gilbert his said receipt for the said amount of money so paid by him as aforesaid, and attached to, and connected with, the said receipt was and is a notation setting forth in detail the requirements of the law to be observed and complied with by the said Charles Gilbert, in order to obtain title to said lands so applied for by him as aforesaid, and to be entered by him, as follows, to-wit: "Note.—It is required of the homestead settler that he shall reside upon and cultivate the land embraced in his homestead entry for a period of five years from the time of filing the affidavit, being also the date of entry. An abandonment of the land for more than six months works a forfeiture of the claim. Further, within two years of the expiration of the said five years, he must offer proof of his actual settlement and cultivation, failing to do which, his entry will be cancelled. If the settler does not wish to remain five years on his tract, he can, at any time after fourteen months, pay for it

with cash or land warrants, upon making proof of settlement and of residence and cultivation from the date of filing affidavit to the time of payment.”

THIRD:

That thereupon, in order to entitle the said Charles Gilbert to obtain and procure from the said United State a patent for said tract of land, under the homestead laws of the United States, it was incumbent upon said Charles Gilbert, and he was required to make actual settlement on said lands and reside thereon and cultivate the same for a period of five years from and after the filing in said local land office at Helena, Montana, of his said application and affidavit hereinbefore set forth, or in case said Charles Gilbert did not desire to remain upon said land the full period of five years, to make payment for the same at the expiration of fourteen months from and after the filing of said application and affidavit, upon making proof before the Register and Receiver of the said local land office of the United States, at Helena, Montana, of settling upon and the cultivation of said lands by said Charles Gilbert, from the date of filing said application and affidavit down to the time of making such payment. That thereafter, on the 15th day of June, A. D., 1904, the said Charles Gilbert appeared before C. H. Benton, then and there the Receiver of the United States Land Office at Great Falls, Montana, which said land office was then and there the proper local land office for making of final proof upon said homestead entry hereinbefore mentioned,

with his final proof witnesses, Charles Wise and William A. Mahaffey, and offered proof before the said Register and Receiver that he had settled upon said lands and premises and actually resided thereon and cultivated the same as required and within the meaning and intent of the said homestead laws of the said United States, and then and there gave, made out, and signed his deposition and swore to the same before the said C. H. Benton, Receiver of the United States Land Office at Great Falls, Montana, the said land office then and there being the proper United States Land Office of the land district wherein the said lands are situated, and then and there offered, presented, delivered and filed said affidavit, deposition and sworn statement so made, signed and sworn to by the said Charles Gilbert, to and with the said Register and Receiver of the said United States Land Office, as proof of the settlement and residence upon and the cultivation of the said lands by the said Charles Gilbert, as required by the law and the statute in such case made and provided, and the same were accepted by the said Register and Receiver of the said land office.

FOURTH.

And your orator sheweth unto your honors that the said Charles Gilbert, in said affidavit, deposition and sworn statement, made, signed, and sworn to by him, as aforesaid, and offered, presented, delivered to, and filed with, the said Register and Receiver, and accepted by them as proof of the settlement and residence of the said Charles Gilbert,

upon the said lands, and of the cultivation of the same by him, the said Charles Gilbert, among other matters and things, testified and deposed that he had actually resided on said lands continuously since June, 1899, and that he had placed improvements upon the said lands of the value of three hundred dollars, and that he had constructed a frame house fourteen feet by twenty feet, and had constructed a fence around said lands, and that he had built a chicken house and stable upon said lands, and that he had cultivated one and one-half acres of the said land, and that he, the said Charles Gilbert, procured from each of said final proof witnesses, William A. Mahaffey and Charles Wise, affidavits, depositions and sworn statements taken before the said C. H. Benton, as aforesaid, made, signed and sworn to by the said final proof witnesses before the said Receiver, as aforesaid, to the same effect and corroborative and in aid of the said affidavit, deposition and sworn statement made, signed and sworn to by the said Charles Gilbert, and filed the same, together with the said Charles Gilbert's own affidavit, deposition, and sworn statement, in the local land office of the United States, at Great Falls, and offered, presented and delivered the same to the said Register and Receiver of the said land office, together with his own affidavit, deposition and sworn statement, as proof of the settlement and residence upon and the cultivation of the said land by the said Charles Gilbert, as required by law, and all of the said affidavits, depositions and sworn statements

of the said Charles Gilbert and of his said final proof witnesses, so made, signed and sworn to, as aforesaid, and offered, presented, delivered to, and filed with, the said Register and Receiver of the said land office, as aforesaid, were, and each of them was, then and there taken and accepted by the said Register and Receiver of the said land office as proof of the settlement and residence of the said Charles Gilbert upon the said lands.

That thereafter, on the 18 day of June, A. D. 1904, the said Charles Gilbert paid to the Receiver of the said United States Land Office, at Great Falls, Montana, the sum of six dollars, being the balance of payment for said land, as required by law, and thereupon the said Receiver then and there issued to the said Charles Gilbert, his final receipt No. 686, for the said money so paid to him by the said Charles Gilbert, in payment for said lands, as aforesaid, and the Register of the said land office likewise then and there issued to the said Charles Gilbert his certificate No. 686 for said lands, certifying that in pursuance of law, the said Charles Gilbert had purchased said land and upon presentation of said certificate to the Commissioner of the General Land Office, the said Charles Gilbert should be entitled to receive a patent for said lands hereinbefore more particularly mentioned and described. That thereafter, such proceedings were had that on the 31 day of December, A. D., 1904, a patent was issued to the said Charles Gilbert, for the said lands, which patent was duly delivered to

the said defendant, and received by him.

FIFTH:

And your orator further sheweth unto your honors that the said acceptance of the said affidavits, depositions, and testimony of the said Charles Gilbert, and of his said final proof witnesses, William A. Mahaffey and Charles Wise, as proof of the settlement and residence of the said Charles Gilbert, upon said lands, and the cultivation of same by him, as required by law, by the said Register and Receiver, and the issuance by the said Receiver of the said final receipt, and the issuance by the said Register of the said certificate of purchase, as hereinabove mentioned and set forth, and the issuance of the said patent for the said tract of land by the United States, were had and done by the said officers of the said United States, in reliance by them, and each of them, upon the truth of the testimony and statements contained in the affidavits and depositions of the said Charles Gilbert, and in reliance by them, and each of them, upon the truth of the testimony and statements contained in the affidavits and depositions of the said final proof witnesses, William A. Mahaffey and Charles Wise, and in reliance upon the good faith of the said Charles Gilbert, and his said final proof witnesses in the premises, and not otherwise.

SIXTH:

That the said affidavit and deposition of the said Charles Gilbert, and the affidavits and depositions of the said final proof witnesses, William A. Ma-

haffey and Charles Wise, were, and each of them was, then and there false, fraudulent and untrue, as was then and there well known to the said Charles Gilbert, and to each of the said final proof witnesses, and made with intent to deceive the officers of the United States, and with intent to fraudulently obtain patent to the said lands hereinabove described, and by fraud and deceit to procure a patent to the said lands by means of false and fraudulent testimony and statements, made and contained in the said affidavits and depositions and testimony, in this, to-wit: That the said Charles Gilbert had not established and did not establish residence upon said lands, or any part or portion thereof during the month of March, 1899, or at any other time, or at all, and that the said Charles Gilbert had not, at the time of making said final proof and the filing of the same in the said land office, resided on said lands or any part or portion thereof, continuously, or in any other manner, or at all, since the month of March, 1899, or at any other time, and had not then, or at any other time, built a frame house, fourteen by twenty feet, and that the said Charles Gilbert had not enclosed said lands with a fence, and that the said Charles Gilbert had not built a chicken house and stable upon said lands, and that the said Charles Gilbert had not cultivated one and one-half acres of the said lands, and that the said Charles Gilbert had not then and there, or at any other time, or at all, improvements upon the said lands of the value of three hundred dollars, or any other value or

amount whatsoever. That your orator alleges the fact to be that the said Charles Gilbert did not make a settlement upon said lands, or any part or portion thereof, and did not establish his residence upon said lands, or any part or portion thereof, during the month of March, 1899, and that the said Charles Gilbert did not cultivate any part or portion thereof from March, 1899 to the time of filing said final proof or at any other time, or at all, and that the said Charles Gilbert did not have improvements upon said lands of the value of three hundred dollars, or any other value whatever, and that each and every of the said statements so made by the said Charles Gilbert and his said final proof witnesses, as hereinbefore specifically mentioned and set forth, and which are contained in the said affidavits, depositions and testimony to prove settlement and residence by the said Charles Gilbert upon said lands, and the cultivation by the said Charles Gilbert of the same, as required by the homestead laws of the United States, are utterly false, fraudulent and untrue in every particular, as he, the said Charles Gilbert, then and there well knew.

SEVENTH:

And your orator further charges and alleges that the said testimony of the said Charles Gilbert, as contained in said affidavit and deposition of the said Charles Gilbert, and the testimony of his said final proof witnesses, William A. Mahaffey and Charles Wise, as contained in said affidavits and depositions made by them, as aforesaid, was false,

fraudulent and untrue in the respects and in the several particulars as hereinbefore set forth, and the same were made, offered, presented and filed as proof of the settlement and residence by the said Charles Gilbert upon said lands, and the cultivation of the same, as aforesaid, for the false and fraudulent purpose of imposing upon and deceiving the Register and Receiver of the said United States Land Office, at Great Falls, Montana, and to cause and induce the said officers and agents of your orator to believe said testimony contained in said affidavits and depositions was true, and that the said Charles Gilbert had, in fact, made and established settlement and residence upon said tract of land and had cultivated the same in the manner and to the extent and for and during the period of time as therein stated, by the said Charles Gilbert, and his said final proof witnesses, William A. Mahaffey and Charles Wise, were wholly deceived and misled into allowing said proof to be filed and accepted, and in permitting the issuance of said final receipt and the issuance of said certificate of purchase to said lands and of the United States patent therefor, by the officers of the United States, as hereinbefore set forth, and delivering said patent to the said Charles Gilbert.

NINTH:

And your orator further sheweth unto your honors that since the issuance of said final receipt and certificate and patent for said lands to the said Charles Gilbert, the said Charles Gilbert heretofore,

to-wit, on July 15, 1904, deeded and conveyed by warranty deed the said lands to the said defendant, Frank D. Cooper, and that the said defendant, Frank D. Cooper, is now in the occupancy, possession and enjoyment of the said lands and premises, but your orator alleges that by whatever pretended right or title the said Frank D. Cooper now holds possession of or occupies the said land, the same is wholly void and ineffectual as against the rights of your orator; that the existence of said patent so fraudulently obtained and procured by the said Charles Gilbert, as hereinbefore set forth, on its face entitled the said Charles Gilbert, and those claiming under him, to exercise the right of absolute ownership on and over the said lands, and assert a legal title to the same, to which the defendant is not entitled; that if the said patent remains uncanceled and in force, the same may be used in fraud of your orator and all persons relying thereon, as a valid and substantial conveyance of the legal title to said lands and premises.

TENTH:

And your orator further avers and charges that the said defendant, Frank D. Cooper, was not a purchaser in good faith and for a valid consideration of the lands herein involved; but if he purchased at all, purchased the same with full and complete knowledge that they were entered in fraud and in violation of the laws of the United States by his said pretended grantor, Charles Gilbert, against the legal and equitable rights of the complainant; that

said pretended purchase is void and should be so decreed in equity in favor of this complainant and against the said defendant, Frank D. Cooper.

ELEVENTH:

And your orator further showeth unto your hon-
ors that on or about the 13th day of December, 1909,
the said defendant Frank D. Cooper and his wife,
Alice G. Cooper executed and delivered to the de-
fendant George Heaton their contract in writing by
which they agreed and bound themselves to convey
to the said defendant George Heaton all of their
rights, title and interest in and to the lands herein
first above described; and your orator further
showeth that the said defendant George Heaton by
reason of the execution of said contract now claims
some right, title and interest in and to the said lands
adverse to the rights of the complainant therein, but
your orator alleges that whatever interest the said
George Heaton now claims to have in said lands was
received and accepted by him with full knowledge of
the fraud so perpetrated upon this complainant in
the procurement of said patent, and that he is not a
bona fide purchaser for value without notice of
said fraud, and in equity and in good conscience said
contract, insofar as it affects the lands herein in-
volved, should be cancelled and held for naught.

All of which actions, doings, and pretenses of the
defendants are contrary to equity and good con-
science, and tend to the manifest wrong, injury and

oppression of this complainant in the premises.

IN CONSIDERATION WHEREOF, and for as much as the complainant is remediless in the premises at and by the strict rules of the common law, and is relievable only in a court of equity where matters of this nature are properly cognizable and relievable, and,

TO THE END, THEREFORE, that the said defendants, Frank D. Cooper and George Heaton, may full, true, direct, and perfect answer make to all and singular the matters hereinbefore stated and charged but not under oath (an answer under oath being hereby expressly waived) as fully and particularly as if the same were hereinafter repeated and they thereunto distinctly interrogated; and to the end that the said defendants and all and singular his agents, employes, and servants may be forthwith and forever restrained and enjoined from setting up and asserting or claiming any rights, privileges, benefits, or advantages under and by reason of said patent or said pretended deed of conveyance, or said agreement to sell said lands, herein before mentioned; and to the end that said patent so issued by the complainant to the said Charles Gilbert may be declared void and cancelled; and that said pretended deed of conveyance from the said Charles Gilbert to the defendant, Frank D. Cooper, may be, by decree of this Honorable Court, treated as a cloud upon the title of complainant to all and singular the lands at Paragraph I herein described, and

the same removed as such; and that said agreement so entered into between the defendant Frank D. Cooper and his wife and the defendant George Heaton, insofar as the same affects the title to the lands herein involved, be cancelled and held for naught; And that the legal and equitable title thereto and the right of possession thereof be restored and given to the complainant; and that the complainant have such other and further relief in the premises as the circumstances of this cause may require, and as to this Honorable Court may seem meet and proper, and as shall be agreeable to equity and good conscience.

May it please your Honors to grant unto the complainant the Writ of Subpoena to be directed to the said Frank D. Cooper, and George Heaton, thereby commanding him at a certain time and under a certain penalty, therein to be specified, personally to be and to appear before this Honorable Court, and then and there to answer all and singular the premises, and to stand to and abide such further order, direction or decree therein as to this Honorable Court may seem meet.

(Signed) GEORGE W. WICKERSHAM,
Attorney-General of the United States.

JAS. W. FREEMAN,
United States Attorney, District of Montana.

UNITED STATES OF AMERICA,

District of Montana,—ss.

JAMES W. FREEMAN, being first 'duly sworn, deposes and says that he is the regularly appointed, qualified, and acting United States Attorney for the District of Montana; that he has read the foregoing bill of complaint and knows the contents thereof, and that the matters and facts therein stated and alleged are true to the best of his knowledge, information and belief.

(Signed) JAS. W. FREEMAN,

Subscribed and sworn to before me this 7 day of December, 1909.

(Signed) GEO. W. SPROULE,

Clerk U. S. Circuit Court, District of Montana.

(Endorsed: Filed December 7, 1909, Geo. W. Sproule, Clerk.)

NOTE BY CLERK:

The parts underscored are amendments to the original bill, allowed by the Court under order of May 23rd, 1912, hereinafter set forth.)

Thereafter, on December 7, 1909, subpoena in equity was duly issued herein as follows, to-wit:

UNITED STATES OF AMERICA.

*Circuit Court of the United States, Ninth Judicial
Circuit, District of Montana.*

IN EQUITY.

TO THE PRESIDENT OF THE UNITED
STATES OF AMERICA, GREETING:

TO,

FRANK D. COOPER, Defendant:

YOU ARE HEREBY COMMANDED, That you be and appear in said Circuit Court of the United States aforesaid, at the Court Room in FEDERAL BUILDING, HELENA, MONTANA, on the 3rd day of JANUARY, A. D., 1910 to answer a Bill of Complaint exhibited against you in said Court by THE UNITED STATES OF AMERICA, Complainant, and to do and receive what the said Court shall have considered in that behalf. And this you are not to omit, under the penalty of FIVE THOUSAND DOLLARS.

WITNESS: The Honorable MELVILLE W. FULLER, Chief Justice of the United States, this 7th day of Dec., in the year of our Lord one thousand nine hundred and nine and of our Independence the 42.

(SEAL). (Signed) GEO. W. SPROULE,
Clerk.

Memorandum, pursuant to Rule 12, Supreme Court,
U. S.

YOU ARE HEREBY REQUIRED to enter your appearance in the above suit, on or before the first Monday of January next, at the Clerk's Office of said Court, pursuant to said Bill; otherwise the said Bill will be taken pro confesso.

GEO. W. SPROULE, Clerk.

Geo. W. Wickersham, U. S. Atty. Gen.,
Washington, D. C., J. W. Freeman,
U. S. Atty., Solicitor for Complainant.
Helena, Montana.

(Service of the within subpoena accepted for defendant, and copy thereof received this 18th day of December, 1909.

JAMES A. WALSH,
Attorney for Defendant.

(Endorsed, filed, December 20th, 1909, Geo. W. Sproule, Clerk.)

Thereafter, on March 29, 1910, defendant Cooper filed his answer herein, as follows, to-wit:

(TITLE OF COURT, TITLE OF CAUSE.)

No. 948.

ANSWER TO BILL OF COMPLAINT.

This defendant, now and at all times hereafter, saving to himself, all, and all manner of benefit or advantage of exception, or otherwise, that can or may be had or taken to the many errors, uncertainties and imperfections, in the said Bill of Complaint contained, for answer thereto, or to so much thereof as this defendant is advised, it is material or necessary for him to make answer to, answering says:

I.

Admits that complainant was on the first day of December, 1898, the owner of said lands mentioned and described in the complaint, and that Charles Gilbert made and filed in the local land office his application to enter said lands as a homestead.

II.

Admits that the said Charles Gilbert filed an affidavit in the local land office, setting forth the matters and things required by law to be set forth in such cases made and provided; and that he paid the legal fee, required and that the Receiver of said land office issued to him a receipt in the form required by law.

III.

Admits that it was incumbent upon said Charles Gilbert to comply with the law, as to residence and cultivation upon said land to acquire title thereto.

IV.

Admits that on or about the 5th day of June, 1904, the said Charles Gilbert offered proof of his settlement and residence upon said lands, and presented affidavit in compliance with the law, showing the matters and things necessary to acquire title thereto.

V.

Admits that said Charles Gilbert presented a sworn statement that he had actually settled upon said land and resided thereon since June, 1899, within the meaning and intent of the homestead laws, and placed improvements upon said land to the

value of Three Hundred Dollars, and constructed a frame house, fourteen by twenty feet and had constructed a fence around some of the land, built a chicken house and stable, and cultivated one and one-half acres of said land; and that said affidavit was also corroborated by the affidavits of William A. Mahaffey and Charles Wise; and that said proof was accepted by the Register and Receiver of said land office, and that said officers issued to him a certificate thereof, as provided by law, which entitled said Charles Gilbert to receive a patent for said land; and that thereafter such proceedings were had that on the 31st day of December, 1904, a patent was issued and delivered for said land; and denies all other matters and things contained in paragraph three of the Bill of Complaint.

VI.

That whether or not the said officer of said land office accepted or relied upon said affidavits of said Charles Gilbert, William A. Mahaffey and Charles Wise, or relied upon any reports made by the special agents of the Land Department, this defendant denies that he has any knowledge or information thereof sufficient to form a belief; but denies that the affidavits or depositions of said Charles Gilbert, William A. Mahaffey or Charles Wise were false, fraudulent, or untrue, or that the matters and things stated in said affidavits were known to be false, fraudulent or untrue by the said Charles Gilbert, William A. Mahaffey or Charles

Wise, or that said affidavits were made with the intent to defraud said land office; or to procure patent by means of false or fraudulent testimony made or contained in said affidavits; denies that the said Charles Gilbert had not established his residence upon said land, or that he had not resided upon the same, or that he had not built a house thereon of the size and dimensions stated, or that he had not enclosed the land with a fence to the extent stated in the said affidavit, or that he had not built a chicken house or stable thereon, or that he had not cultivated one and one-half acres of said land; and denies that the matters and things set forth in the depositions of said Charles Gilbert, William A. Mahaffey or Charles Wise, were, or are, false or untrue; and denies each and every other allegation in paragraphs four, five, and six of the Bill of Complaint.

VII.

Denies that the matters and things set forth in the affidavits and depositions of the said Charles Gilbert, William A. Mahaffey or Charles Wise were false, fraudulent or untrue, in respect to the several, or any of the matters therein stated, or that the same was offered or presented for the purpose of deceiving the Register and Receiver of said land office, or to defraud the United States of the said lands; and denies each and every other allegation in Paragraph seven in the Bill of Complaint contained.

VIII.

Admits that some time after the issuance of said final receipt, the said Charles Gilbert deeded and conveyed the said lands to this defendant, and that this defendant is now the owner and in possession thereof; but denies that the right and title of this defendant in and to said lands is wholly, in any manner, or at all void, or ineffectual, as against the right of the complainant; and denies that the said patent was fraudulently obtained.

IX.

Admits that said patent on its face entitled the said Charles Gilbert and those claiming under him to exercise the right of absolute dominion and ownership over said lands and assert legal title to the same; But denies that this defendant is not entitled to assert ownership and legal title to said premises, and denies said patent is, or can be used in fraud of any rights of the complainant; and denies each and every other allegation in paragraph nine of the Bill of Complaint.

X.

Denies that this defendant is not a purchaser in good faith, for a valuable consideration of the lands and premises described in the complaint; and denies that he purchased the same with full, complete or any knowledge that they were entered in fraud or in violation of the laws of the United States by said Charles Gilbert; and denies that the said purchase is void, or that it should be so decreed, and

denies that said premises were entered, or patent procured in fraud or violation of the laws of the United States.

XI.

And defendant avers that he purchased said lands in good faith and paid a valuable consideration therefor, and at the time he purchased said lands he believed and now believes that the said Charles Gilbert entered said lands and procured title thereto in good faith, and had in all things complied with the laws of the United States; and defendant avers that he did not have any notice or knowledge that the said Charles Gilbert had not, or that the complainant herein claimed that he had not, in all things and in good faith complied with the laws of the United States, with reference to settling, residing upon and acquiring title to said land.

XII.

And defendant further avers that all the acts and deeds of the said Charles Gilbert, with reference to establishing residence, residing upon and making improvements upon said land were such that the complainant herein could, with ordinary diligence, through its officers and agents, who were then employed in that business, and before the final proof was made, or certificate issued, have ascertained whether or not the said Charles Gilbert had in all things complied with the law, with reference to settlement, residence, cultivation and improvements on said land necessary to acquire title thereto; and

if any matters or things stated in said affidavits or depositions of said Charles Gilbert or said witnesses were not true, the officers of said land office could have refused to accept final proof and to issue certificate therefor, or patent for said lands, and that complainant by reason of the negligence and laches of its officers is now estopped from asserting any right, title, claim or interest in or to the said lands against this defendant.

XIII.

And defendant avers that since he purchased said land, and before the commencement of this suit, he in good faith entered into a contract with George Heaton, and in good faith sold said land to said Heaton for a valuable consideration, and said Heaton in good faith and for a valuable consideration, and without any notice of the claim of the complainant herein to said land, or any claim that the said Gilbert had not in all things complied with the law in obtaining title to said land, and without any knowledge of any wrong doing, or a claim of wrong doing on the part of the said Charles Gilbert, purchased the said lands from this defendant.

XIV.

And this defendant denies all and all manner of unlawful combination, confederacy and wrong doing wherewith he is by the said Bill charged, without this, that there is any other matter, cause or thing in said complainant's Bill of Complaint contained, material or necessary for this defendant to make

answer unto and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the best of the knowledge of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain and prove, as this honorable Court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) JAMES A. WALSH,
Solicitor for Defendant.

Service of the foregoing admitted and copy thereof received this 29 day of March, 1910.

J. W. FREEMAN,
United States Attorney.

(Endorsed Filed March 29, 1910, Geo. W. Sproule, Clerk.)

Thereafter, on March 30, 1910, Replication was filed therein as follows, to-wit:

(TITLE OF COURT, TITLE OF CAUSE.)

No. 948.

REPLICATION.

This Replicant, saving and reserving to itself all and all manner of advantage of exception which may be had an taken to the manifold errors, uncertainties, and insufficiencies of the answer of said defendant, for replication thereunto sayeth that it does and will ever maintain and prove its said bill to be true, certain and sufficient in the law to be answered

unto by said defendant, and that the answer of said defendant is very uncertain, evasive and insufficient in the law to be replied unto by this replicant without that that any other matter or thing in said answer contained material or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true, all which matters and things this replicant is ready to aver, maintain and prove as this honorable court shall direct and humbly as in and by its said bill, it has already prayed.

JAMES W. FREEMAN,

United States Attorney.

(Service accepted March 30, 1910, James A. Walsh, Solicitor for Defendant.)

(Endorsed, Filed March 30, 1910, Geo. W. Sproule, Clerk.)

Thereafter, on May 23, 1912, an order allowing amendments was duly made and entered herein, as follows, to-wit:

*In the District Court of the United States in and for
the District of Montana.*

Nos. 946, 947 and 948, United States vs. Frank D. Cooper.

These causes, heretofore submitted to the Court, came on regularly at this time for the decision of the court; whereupon it is ordered that the complainant be allowed to amend its bill of complaint in each of the above entitled causes by adding the name of George Heaton as party defendant, by interlineation

as far as feasible, and by attaching a separate paragraph to properly state the case as to him, and thereupon complainant may have other subpoenas issued and proceed to service thereof upon Heaton.

Thereafter the actions may proceed as the parties are advised.

Entered, in open court, May 23, 1912.

GEO. W. SPROULE, Clerk.

Thereafter, on June 19, 1912, Notice and Amendments were filed herein, being as follows: to-wit:

(TITLE OF COURT, TITLE OF CAUSE.)

No. 948.

NOTICE AND AMENDMENTS.

TO J. A. WALSH, ESQ., Attorney for the above named defendant, and FRANK D. COOPER, Defendant in the above entitled action:

You and each of you will please take notice that the complainant in the above entitled action did on the 14th day of June, 1912, amend its bill of complaint in accordance with an order of the Honorable George M. Bourquin filed and entered on May 23, 1912, by then and there making the following interlineations and insertions:

1. Page 1, lines 7 and 8, by adding "and George Heaton."

2. Page 1, line 8 by adding the letter "s" to the word defendant.

3. Page 1, line 16, after the word "Montana", by adding "and George Heaton, a resident of the Southern District of the State of Iowa."

4. Page 12, between lines 22 and 23, by adding Paragraph eleven which is as follows:

“ELEVENTH”

And your orator further showeth unto your honors that on or about the 13th day of December, 1909, the said defendant, Frank D. Cooper and his wife Alice G. Cooper executed and delivered to the defendant George Heaton their contract in writing by which they agreed and bound themselves to convey to the said defendant George Heaton all of their right, title and interest in and to the lands herein first above described; and your orator further showeth that the said defendant George Heaton by reason of the execution of said contract now claims some right, title and interest in and to the said lands adverse to the rights of the complainant therein, but your orator alleges that whatever interest the said George Heaton now claims to have in said lands was received and accepted by him with full knowledge of the fraud so perpetrated upon this complainant in the procurement of said patent, and that he is not a bona fide purchaser for value without notice of said fraud, and in equity and good conscience said contract, insofar as it affects the lands herein involved, should be cancelled and held for naught.”

5. Page 12, line 24, by adding the letter “s” to the word “defendant.”

6. Page 12, line 32, by adding the letter “s” to the word ‘defendant’.

7. Page 12, line 33, by adding “and George Heaton.”

8. Page 13, line 5, by striking out the word "he", and inserting in lieu thereof the word "they."

9. Page 13, line 6, by adding the letter "s" to the word "defendant."

10. Page 13, line 7, by striking out the word "his" and inserting in lieu thereof the word "their".

11. Page 13, line 11, by inserting after the word "conveyance" the following, "or said agreement to sell said lands, hereinbefore mentioned."

12. Page 13, line 19, after the word "such" by inserting, "and that said agreement so entered into between the defendant Frank D. Cooper and his wife and the defendant George Heaton, insofar as the same affects the title to the lands herein involved, be cancelled and held for naught."

13. Page 13, line 29, by adding "and George Heaton."

All of which will fully appear from the original bill of complaint on file in the office of the Clerk of the United States District Court, District of Montana, to which reference is hereby made.

Dated this 19th day of June, 1912.

EDWARD A. LaBOSSIERE,

Assistant U. S. Attorney

District of Montana.

Due service of the within notice acknowledged and true copy thereof received this 19th day of June, 1912.

JAMES A. WALSH,

Attorney for defendant.

(Endorsed filed, June 19, 1912. Geo. W. Sproule, Clerk, by C. R. Garlow, Deputy.)

Thereafter, on Sept. 17, 1912, an Order was duly entered herein, as follows, to-wit:

(TITLE OF COURT, TITLE OF CAUSE.)

No. 948.

ORDER.

It having been made to appear in the above entitled cause that the defendant George Heaton is not a resident of and within the state and district of Montana, but that the said defendant is a resident and inhabitant of St. Paul, in the district of Minnesota, and that personal service of process of this court cannot be had or obtained upon said aforementioned defendant within the district of Montana, and application having been made to this Court pursuant to Section No. 8, of the Act of March, 3, 1875, for an order of this court requiring and directing the said defendant to appear, plead, answer or demur to said complainant's bill of complaint on file herein by a day certain to be fixed and designated by this court;

Now, therefore, it is ORDERED that said application, be, and the same is, hereby granted, and you, the said George Heaton, one of the defendants in the above entitled cause, are hereby ordered and required and directed to be and appear in the district court of the United States, District of Montana, in the City of Helena, in the district of Montana, on the 4th day of November, 1912, and then

and there to plead, answer or demur to complainant's bill of complaint exhibited against you in said court by the said complainant, the United States of America, to which said bill of complaint you are hereby referred, and to receive what said court shall have considered in that behalf.

Dated this 17th day of September, 1912.

(Signed) FRANK S. DIETRICH,
Judge.

(Entered Sep. 17, 1912, Geo. W. Sproule, Clerk, By Harry Dunn, Deputy. Filed October 2nd, 1912, Geo. W. Sproule, by C. R. Garlow, Deputy.)

RETURN ON SERVICE OF WRIT.

UNITED STATES OF AMERICA,
District of Minnesota,—ss.

I hereby certify and return that I served the annexed Order on the therein-named George Heaton by handing to and leaving a true and correct copy thereof with him, personally at St. Paul, in said District on the day of September, A. D. 1912.

WILLIAM H. GRIMSHAW,
U. S. Marshall.
By GEO. W. WELLS, Deputy.

Thereafter, on Dec. 2, 1912, the Answer of defendant Heaton was filed herein, being as follows, to-wit:

(TITLE OF COURT, TITLE OF CAUSE.)

No. 948.

IN EQUITY.

SEPARATE ANSWER OF DEFENDANT
GEORGE HEATON.

The answer of George Heaton, one of the defendants to the bill of complaint as amended of the above named complainant:

This defendant, ^{all}now and at all times hereafter, saving to himself and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering says:

1. This defendant admits the allegations contained in paragraphs numbered First to Fifth, both inclusive, of complainant's bill of complaint as amended.

2. This defendant has no knowledge or information as to the truth or falsity of any of the allegations contained in paragraphs numbered Sixth, Seventh and Eighth of said bill of complaint as amended, and can not set forth at to his belief or otherwise, whether or not any of said allegations are true, and calls for proof thereof.

3. This defendant has no knowledge or information as to the truth of falsity of any of the allegations contained in paragraph Numbered Ninth of

said bill of complaint as amended, and cannot set forth as to his belief or otherwise whether or not any of said allegations are true, and calls for proof thereof, except that this defendant admits that the said Charles Gilbert, on the 15th day of July, 1904, deeded the lands mentioned and described in paragraph numbered First of the said bill of complaint as amended, to the said defendant Frank D. Cooper; but this answering defendant says that the said Frank D. Cooper is not now in the occupancy, possession and enjoyment, or either thereof, of said lands and premises; but that this defendant was in the occupancy, possession and enjoyment of said lands from the 1st day of August, 1910, until the 22nd day of April, 1911, under and by virtue of a contract for the sale of said lands executed and delivered to this defendant on the 13th day of December, 1909, by said defendant Frank D. Cooper and Alice G. Cooper, his wife; and that ever since the 22nd day of April, 1911, the said lands have been and still are in the occupancy, possession and enjoyment of the Great Falls Farm Land Company, a Montana corporation, under and by virtue of an assignment of the contract above mentioned, executed and delivered to the said Great Falls Farm Land Company by this defendant on the said 22nd day of April, 1911; and that the right or title by which this said defendant so held possession and occupied said lands was, and the right to title by which said Great Falls Farm Land Company now holds possession

and occupies said lands is, valid and effectual as against the rights of complainant; and that this defendant was, from the 1st day of August, 1910, until the 22nd day of April, 1911, and the said Great Falls Farm Land Company now is entitled to exercise the right of absolute ownership on and over said lands, and to assert a legal title to the same; and that this defendant does not believe that, if the said patent remains uncanceled and in force, the same may be used in fraud of the complainant and all persons relying thereon, as a valid and substantial conveyance of the legal title to said lands and premises.

4. That this defendant has no knowledge or information as to the truth or falsity of any of the allegations contained in paragraph numbered Tenth of said bill of complaint as amended, and cannot set forth as to his belief or otherwise, whether or not any of said allegations are true, and calls for proof thereof, except that this defendant does not believe that the said defendant Frank D. Cooper was not a purchaser in good faith and for a valid consideration of the lands, herein involved; and does not believe that the said defendant Frank D. Cooper purchased the said lands with full and complete knowledge, or any knowledge at all, that they were entered in fraud or in violation of the laws of the United States by the said Charles Gilbert, against the legal and equitable rights of the complainant; and does not believe that said purchase by said defendant Frank D. Cooper is void and should be so

decreed in equity in favor of said complainant and against the said defendant Frank D. Cooper, or against this defendant or his successors in interest.

5. This defendant has no knowledge or information as to the truth or the falsity of any of the allegations contained in paragraph numbered Eleventh of said bill of complaint as amended, and cannot set forth as to ~~this~~ belief or otherwise, whether or not any of said allegations are true, and calls for proof thereof, except that this defendant admits that on or about the 13th day of December, 1909, the said defendant Frank D. Cooper and his wife, Alice G. Cooper, executed and delivered to this defendant their contract by which they agreed and bound themselves to convey to this defendant all their rights, title and interest in and to the lands herein involved; and this defendant says that he procured the execution and delivery of said contract in good faith and for a valuable consideration; and that he, by reason of the execution and delivery of said contract, had, from the 1st day of August, 1910, until the 22nd day of April, 1911, and that the said Great Falls Farm Land Company had, ever since said 22nd day of April, 1911, and now has, the right of absolute ownership over, in and to said lands; and that the interest heretofore asserted and claimed by this defendant in said lands was acquired by him under the contract hereinabove referred to, and without any knowledge of any fraud in any manner perpetrated upon said complainant in the procurement of the said patent; and that this

defendant was a bona fide purchaser for value without notice of any fraud; and that this defendant does not believe that, in equity and good conscience, said contract, in so far as it affects the lands herein involved, should be cancelled and held for naught.

6. For further answer and defense to the said bill of complaint as amended, this answering defendant avers and says: That on the 13th day of December, 1909, this defendant made and entered into a contract in writing with said defendant Frank D. Cooper and Alice G. Cooper, his wife, wherein and whereby said Frank D. Cooper and Alice G. Cooper, his wife, sold and agreed to convey, in fee simple by warranty deed, to this defendant, the north half of the northwest quarter of section fourteen, and the east half of the northeast quarter of section fifteen) township nineteen north of range three west of the Montana principal meridian, containing one hundred and sixty (160) acres, situate, lying and being in the County of Cascade, State and District of Montana, together with other lands situate in the counties of Cascade and Lewis and Clark in said State and District of Montana; that in and by said contract this defendant agreed and bound himself to pay to said Frank D. Cooper and Alice G. Cooper, his wife, the sum of five and 70/100 Dollars (\$5.70) per acre for all of said lands mentioned in said contract, including the lands herein involved, in certain specified installments, which sum was the full value of the lands and premises by said contract agreed to be

conveyed; that this defendant and his successor in interest under said contract, the said Great Falls Farm Land Company, have fully paid all the installments due under said contract up to this time, and are legally bound to pay the balance thereof; that, under the terms and provisions of said contract, possession of the lands herein involved was given to this defendant on the 1st day of August, 1910, and that upon said date this defendant entered into the occupancy, possession and enjoyment of the said lands. And this defendant further says that he did not, at the time of the execution of the contract hereinbefore mentioned, or at any other time, have any knowledge, information or notice of any fraud or improper conduct in reference to procuring a patent to said lands; that under the terms and provisions of said contract, and by virtue of the full performance on the part of this defendant of all the covenants therein contained by him to be kept and performed, up to the 22nd day of April, 1911, this defendant became and was a bona fide purchaser of said lands for a valuable consideration.

And this defendant further says that he did, on the 22nd day of April, 1911, for a valuable consideration, sell, assign, transfer and set over to the Great Falls Land Company, a Montana corporation, the above mentioned contract and all of his right, title and interest therein and thereunder.

7. And this defendant, in addition to the foregoing answer avers that the cause of action, if any there may be arising to the complainant on account

or by reason of the several allegations and complaints in its said bill contained, did not accrue within six years before the said bill was filed and subpoena thereunder served upon this defendant; and this allegation defendant makes in bar of the complainant's bill and prays that he may have the same benefit therefrom as if he had formally pleaded the same.

WHEREFORE, this defendant having fully answered, confessed, traversed and avoided or denied all the matters in the said bill of complaint as amended material to be answered, according to his best knowledge and belief, humbly prays this honorable court to enter its decree that this defendant be dismissed with his reasonable costs and charges in his behalf most wrongfully sustained, and for such other and further relief in the premises as to this honorable court may seem meet and in accordance with equity.

GEORGE HEATON.

By E. C. DAY,
His Solicitor.

DAY & MAPES,

Solicitors and of counsel for
the defendant George Heaton.

Helena, Montana, Dec. 1, 1912.

(Endorsed: Filed Dec. 2nd, 1912, Geo. W. Sproule, Clerk, By C. R. Garlow, Deputy.)

Thereafter, on Dec. 23, 1912, Replication was filed herein as follows, to-wit:

(TITLE OF COURT, TITLE OF CAUSE.)

No. 948.

REPLICATION TO SEPARATE ANSWER OF
GEORGE HEATON.

This replicant, saving and reserving to itself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of said defendant, and for replication thereunto sayeth that it does and will ever maintain and prove its said bill to be true, certain and sufficient in the law to be answered unto by said defendant, and that the answer of said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by this replicant; without that that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, confessed or avoided, traversed, or denied is true; all which matters and things this replicant is ready to aver, maintain and prove as this Honorable Court shall direct, and humbly as in and by its said bill it has already prayed.

(Signed) J. W. FREEMAN,
United State Attorney
District of Montana.

Due service of the within replication acknowledged and true copy thereof received this 23rd day of December, 1912. Day & Mapes, Attorneys for Defendants.

(Endorsed: Filed Dec. 23, 1912, Geo. W. Sproule,

Clerk, By C. R. Garlow, Deputy.)

Thereafter, on January 28th, 1914, Decree was filed and entered herein, as follows, to-wit:

(TITLE OF COURT, TITLE OF CAUSE.)

No. 948.

DECREE.

This cause came on to be heard at this term, to-wit, on the 15th day of January, 1914, upon the pleadings and the proof, and was argued by counsel, and

It appearing to the court that a bill in equity was filed in this court on the 7th day of December, 1909, against the defendant, Frank D. Cooper, and that subpoena was duly issued; that thereafter said defendant filed his answer to said bill of complaint, and

It further appearing that by an order of this court made on the 23rd day of May, 1912, the said George Heaton was made a party to said suit; that notice was duly issued and served upon said defendant, George Heaton, and that thereafter, on the 2nd day of December, 1912, said George Heaton filed his answer herein, and

It further appearing, and the court finds, that the patent to the following described land, to-wit: The North half of the northwest quarter of section fourteen, and the east half of the northeast quarter of section fifteen, township nineteen north, range three west of Montana principal meridian, containing one hundred sixty acres of land, situate, lying and being

in the county of Cascade, state and district of Montana, was fraudulently procured by Charles Gilbert; that the said Frank D. Cooper is not and was not a bona fide purchaser of said land for value without notice of the fraud perpetrated upon complainant, and,

It further appearing that by the terms of a certain contract in writing dated December 13, 1909, the said defendant, Frank D. Cooper, agreed to sell, and the said defendant, George Heaton, agreed to buy, said lands, the purchase price thereof to be paid in installments covering some six years, and upon payment in full said Frank D. Cooper is to convey said land by warranty deed to said defendant, George Heaton; that more than six years has expired from the date of the issuance of said patent to the date of service of notice upon said George Heaton, and that the cancellation of said patent has become impracticable since said suit has been brought, and

It further appearing that the value of said land, at the date of the execution of said contract, was five and 70/100 dollars (\$5.70) per acre, and that complainant is entitled to the value thereof, and the court being fully advised in the premises;

IT IS ORDERED, ADJUDGED and DECREED that the said complainant, the United States of America, do have and recover of and from the said defendant, Frank D. Cooper, the sum of Nine hundred twelve dollars (\$912), with interest thereon at the rate of eight per cent per annu, from the 13th day of December, 1909, amounting to three

hundred and 96/100 dollars (\$300.96), making a total of twelve hundred twelve and 96/100 dollars (\$1212.96), together with its costs incurred herein taxed at, and

IT IS FURTHER ORDERED, ADJUDGED and DECREED that unless said amount is paid by the defendant, Frank D. Cooper, the said defendant, George Heaton, shall pay the same to complainant from the unpaid purchase money owing by the said George Heaton to the said defendant, Frank D. Cooper, upon his said contract of purchase of said lands, when said George Heaton was made a party thereto and appeared herein, and

IT IS FURTHER ORDERED, ADJUDGED and DECREED that such payment, if made by the said defendant, George Heaton, shall discharge said purchase price to the extent thereof, and

IT IS FURTHER ORDERED, ADJUDGED and DECREED that complainant have a lien for the sum of twelve hundred and twelve and 96/100 dollars (\$1212.96), and its costs herein incurred taxed in the amount of.....upon the above described land as security and foreclosure thereof.

GEO. M. BOURQUIN,
Judge.

(Endorsed: Filed January 28, 1914. Geo. W. Sproule, Clerk.)

WHEREUPON, said pleadings, process and final degree are entered of final record herein, in accordance with the law and the practice of this court.

WITNESS my hand and the seal of said court at Helena, Montana, this 28th day of January, A. D. 1914.

(SEAL)

GEO. W. SPROULE,

By C. R. Garlow,

Deputy Clerk.

(Endorsed: Filed, January 28th, 1914. Geo. W. Sproule, Clerk, By: C. R. Garlow, Deputy Clerk.)

BE IT REMEMBERED That this cause came on for hearing on the 30th day of June, 1910, before Hon. O. T. Crane, Standing Examiner in Chancery, at Helena, Montana, and the following proceedings had:

Edgar S. Foley, being duly sworn, and interrogated by Mr. Skinner, counsel for plaintiff, testified as follows:

“My name is Edgar S. Foley. I am 39 years of age; reside at Helena, Montana; occupation, Special Agent of the General Land Office. Have occupied that position for six years, and during all that time was in Montana. Prior to that I was stock breeding and ranching in North Dakota; went into that business about the year 1888. I made an examination of the Charles Gilbert homestead entry, described as follows: N $1\frac{1}{2}$, NW 4, Section 14; E 2, NW 4 Section 15, Township 19 North, Range 3 West, Montana meridian, on the 25th day of September, 1906. I was instructed to do so by our Chief of Division, or Special Agent in Charges. There was no one living on the land at that time. There was nothing

in the way of improvements, that is buildings, plowing, and fencing. I had a conversation with Mr. Gilbert. I saw him on one or two occasions, and saw him at the time I made this examination.

Q. State what conversation you had with him with reference to his living on the entry, and as to what had become of the improvements on the entry?

BY MR. WALSH: We object to that on the ground that it is incompetent, irrelevant, and immaterial, because it does not appear that M. Gilbert was at that time the owner of the land, in that appears by the pleading in this case, that he made final proof on or about the fifteenth day of June, 1904, and that the land was thereafter subject to sale, and it doesn't appear that he had a particle of title at the time of the alleged conversation.

(Objection over-ruled, to which defendant excepted.)

A. Why, he said he had lived there some, and that the cabin had been subsequently moved to another claims.

He further said that, when Mr. Cooper bought these claims that he moved the cabins to other claims. My business as Spezial Agent is examining all classes of entries under the Federal Land Laws. On examining the Gilbert claim I found a small pile of rocks; looked as if there had been a camp fire, that was all. My judgment, in looking at it was that it might have been used for a camp fire. There was absolutely no evidence that it was used as a foundation for a house.

CROSS-EXAMINATION BY MR. WALSH,
COUNSEL FOR DEFENDANT.

I lived in North Dakota since 1878; on the Little Missouri River and on the Big Missouri River. Mr. Kinsey pointed out this land to me. He was instrumental in bringing this case to the attention of the Department. I met him when I went there to examine the land. I had made arrangements to meet him, and I stopped at his place while I was out there. I could not say how long I spent on the Gilbert place. At that time probably twenty-minutes, or such a matter, but that was not the only time I have been over the land. I have been over the land several times subsequent to that. This time I was only there twenty minutes. All I had to do was go and look at the cabin, and identify the land, and go on. Either Kinsey or his son Frank was with me. I cannot say that I had their team then. I was over these lands a number of different times; sometimes I would use Mr. Kinsey's team, and sometimes I would use a Cascade team. I am not sure at this time whether I had his team or not, I might have had.

I examined the Gilbert claim on the 25th day of September; that is what my record shows. I did not find anything on the land in the way of improvements; didn't find any land under cultivation, or any fence, or any corral or other out houses of any kind. I found where a house had been; that is, what Mr. Gilbert told me; he told me that he had

lived there. That was in 1906 that I made the examination. I have absolutely no knowledge as to the conditions that existed prior to that time, and have no knowledge of the conditions that existed prior to September, 1906.

RE-DIRECT EXAMINATION BY MR.
SKINNER.

I did not find any indications of a barn, corral, or chicken-house there on the Gilbert entry.

WILLIAM L. KINSEY, being duly sworn, testified as follows:

“My name is William L. Kinsey, fifty-three years old, my occupation is farmer. I live in Cascade County, Township 19 No., Range 3 West; have lived there since April, 1904. I have known Mr. Cooper for nearly twenty-four years. He was in the sheep business. The Charles Gilbert claim is located in Sections Fourteen and Fifteen, same township and range. I am acquainted with that claim; have known it since the spring of 1904. I never saw any improvements there. There never was a cabin on that claim during the time that I knew it. I was present when Mr. Foley made the first examination out there on the Gilbert claim. I was not present when Mr. Gilbert pointed out where the cabin had been. Mr. Foley told me where it was. There is a few rocks there, and the ground looks as though there had been a ditch made around ten or twenty feet square, something like that, just a small trench. It could have been a house ditch or

a tent ditch. There is often a ditch around a tent you know. I never saw a cabin at that particular place at any time; I never saw any fencing there; never saw any chicken house or any improvements. I talked with Mr. Gilbert a little about it. I don't know as I ever saw Mr. Cooper there more than once before that time. Mr. Gilbert was working for Mr. Cooper in 1904. I think he was herding part of the time, and he might have been tending camp part of the time, I am not sure as to that; herding sheep. Mr. Gilbert is now somewhere in California, I am told. He sold his land.

CROSS EXAMINATION BY MR. WALSH:

I know nothing at all about the condition that existed in that country prior to April, February, or March, 1904. That it the first time I went into that locality. I lived about five and a half miles southwest from Cascade. I was first on the Gilbert claim in 1904. I was looking for some stock that had been turned loose. Never saw any improvements on the place. There was no house on the upper side, but I think there was one on what is known as the Weise claim. I know where the corner stone is. I was with Mr. Foley when he paced that off, and according to his measurement it was on the west claim. He did the measuring; I did not count his steps. I only know what he told me. I saw Mr. Gilbert working for Mr. Cooper, in 1904, herding sheep; I suppose they were Mr. Cooper's sheep; he was camped right there around Mr. Cooper's.

Saw him at the shearing shed. He was camped a portion of the time at what is known as Mr. Cooper's Crown Butte Ranch, possibly a mile or so from this land.

Thereupon, MR. EDWIN R. JONES, being duly sworn, testified as follows:

"My name is Edwin R. Jones. I am twenty-four years old, my residence is St. Peter, Montana; and my occupation, stockraising. I have lived there since July, 1904. Prior to that time I lived at Great Falls, Montana. I am familiar with the homestead entry of Charles Gilbert; have known it since August, 1904. There was nothing there that I could ever see in the way of improvements; I know of nothing whatever. I was present with Special Agent Foley at the time he interviewed Mr. Gilbert. The conversation took place in Mr. Cooper's Crown Butte Ranch house. There was no one present besides Mr. Foley, Mr. Gilbert and myself. Mr. Gilbert did not show Mr. Foley and me over his claim. He pointed it out to us, from the Crown Butte Ranch. I was there with Mr. Foley when Mr. Gilbert pointed out the ranch, and went with Mr. Foley to the claim and where the cabin had been. I found the place where Mr. Gilbert claimed he had a cabin. There were a few marks there that would indicate that something might have stood there at one time, and might have been a tent for all I know; it looked as if it was a trench made for either a tent or a small cabin, or something like that. There was nothing in the way of refuse or coal in the trench;

possibly a dozen rocks. If there was any indication of a chicken-house or a corral having been there, I couldn't see it. There was none of the land fenced when I first saw it. I knew Mr. Gilbert; he was working for Mr. Cooper when I first knew him. He was herding sheep. I do not know how long he worked; only what he told me. .

CROSS-EXAMINATION BY MR. WALSH:

I knew nothing about this claim prior to July, 1904. Never saw it before that date; knew nothing about Gilbert prior to that. When I say he was working for Cooper, I mean after that date. The first time I saw the Gilbert homestead was in August, 1904. I was riding after my cattle, and at that time I did not look around to see where the lines and corners were. I knew it was Gilbert's claim at that time. It was a very pretty location along the creek, and I always took notice of any place like that, more than I would ordinary range land. I saw it several times prior to going there with Mr. Foley. Mr. Gilbert pointed it out to Mr. Foley. At the time he pointed it out he was about a mile from the claim. There was no fence on the claim. I know where the south line of the claim is. I went to the corners to ascertain where the lines were. I was with Special Agent Foley at the time. The fence between the Gilbert and the Carnell land had been removed. The fence, I believe was removed in the Spring of 1905. There was a fence there in 1904 when I was there. It did not extend

around the Gilbert land. I didn't see a chicken-house or a corral, or any indications of a house. I do not know whether that fence belonged to Gilbert or Carnell. It is not customary to build cellars or foundations under cabins on claims, but several claims out there have foundations.

MR. FRANK J. KINSEY, being duly sworn, testified, as follows:

“My name is Frank J. Kinsey; age is twenty-seven; ranching is my occupation; Post Office address, at Simms, Montana. I am the son of William L. Kinsey who just testified. I have lived in Montana about twenty-four years, around St. Peters and Cascade. I have a claim of my own in section twenty-one. Moved there in 1904, sometime in April. I knew that section of the country two years before that, in 1902. I was riding after some horses. I am acquainted with the Gilbert claim ever since 1902. There was nothing on it when I first saw it in the way of improvements, by that I mean fencing, plowing or anything of that sort. In 1904 the same conditions existed. In the spring of 1904, Mr. Gilbert was at Mr. Cooper's Crown Butte Ranch, where I first met him. I should judge that is about a mile, possibly a mile and a half from his claim. He was herding sheep at that time, and I did not see any one else with him.

Q. Whether or not it is customary for a man to leave his sheep and go to some other place to live and sleep?

BY MR. WALSH: We object to that as incom-

petent, irrelevant, and immaterial; no custom is pleaded.

(Objection over-ruled, to which defendant excepted.)

A. No, sir, it is not. A great many times they don't use any corral.

There is a corral and shed at the Crown Butte Ranch. They use that for spring and winter mostly. I couldn't say that I saw Mr. Cooper particularly around the Gilbert land.

CROSS EXAMINATION BY MR. WALSH:

I first saw the Gilbert claim in 1902. I did not see any signs of improvement on it. I first knew Gilbert some time during the spring of 1904. I couldn't say just exactly what time it was, sometime in April, I should judge, or May, possibly the first of June, somewheres along there. He was herding sheep for Cooper at the Crown Butte Ranch. I saw him out with his sheep; that is about all I know about it. From the time I went out there in April 1904, he (Cooper) was up in that part of the country a good many times; I know one time, I was building a fence on my father's homestead, between there and the Carnell Claim, he came along and was talking about putting in some of the fence around the Carnell claim; he said it was his. He was on the Carnell claim at that time. I mean I saw him in that part of the country right around close. I saw him crossing the Gilbert claim. He had a road across that. He had a road he made himself, or his

men did, made the road there and used it in lambing; a road that was worked; around a side hill and crossing a creek.

JOHN LAVERGURE, being duly sworn, testified as follows:

“My name is John Lavergure. I am twenty-seven years old and live at St. Peters, Montana. Have lived there about nineteen years. Am a ranch hand. I knew Mr. Cooper in 1904 or 1905. I knew Mr. Gilbert; knew him before I went to work for Mr. Cooper, in the year 1903 or 1904. I was working for Mr. Cooper; do not know whether Gilbert was working for him or not. I do not know the Gilbert claim.

THOMAS J. SHORT, being duly sworn, testified as follows:

“My name is Thomas J. Short. I am fifty-three years old, live in Great Falls and am tending bar there. I moved there in 1891. I am acquainted with Mr. Cooper; have known him for about eight or nine years. I filed on a claim in Township 19.

Q: How did you come to file on that claim, Mr. Short? Just tell the circumstances surrounding it, reason for it?

BY MR. WALSH: We object to that as incompetent, irrelevant and immaterial, not a matter involved or any issue in this case, don't tend to prove any of the issues in this case.

(Objection over-ruled to which defendant excepted.)

A. Mr. Cooper asked me if I had my right to file

on land; I told him I did, and I filed on it that way.

I guess there was something said about how much I was to receive for using my filing right for Mr. Cooper; I have forgotten; a hundred dollars, or something; I have forgotten now; but I think it was in that neighborhood. After the conversation with Mr. Cooper, a certain attorney came up and we went up to the Court house and filed on the land. Mr. Cooper paid the filing fee. He did the same thing with reference to my daughter. I do not know where the land was located. The description of the land I filed on was furnished by Mr. Cooper. I never was to the land. I never got the chance to go to the land.

CROSS EXAMINATION BY MR. WALSH:

I had the conversation with Cooper at the Grand Hotel. I think Mr. Cooper was to give me One Hundred Dollars. Mr. Cooper made the same arrangements with both of us. My daughter wasn't there at the time, but she went to the Court house with us. I just told her what Mr. Cooper told me, and that's all that was said. I did not get anything out of it. I was supposed to when I proved up in fourteen months. I never proved up on the land. I signed the usual form of affidavit for homestead entry. I don't know what I signed exactly; my daughter signed the same. I do not know why we didn't make final proof.

RE-DIRECT EXAMINATION.

I don't remember whether I signed the papers that Mr. Cooper and his attorney presented to me, or if I had papers made out. I had no interest in my daughter's claim.

JOHN GARDIPEE, SR., being duly sworn, testified as follows:

"My name is John Gardipee, Sr. I live at St. Peter's Montana; lived there seven years. I know Mr. Cooper; have known him ten years. I know where the Gilbert claim is located. I have been through it ever since 1902. I didn't know at that time who it belonged to,—until later. I couldn't describe any improvements on it in 1902, 1903, and 1904. Never was any there that I know of; never saw any fence; wagon road crosses the claim. I could not say where the lines are.

CROSS EXAMINATION BY MR. WALSH:

I don't know who the Gilbert claim, so-called, belongs to. I do not know where the lines are. I don't know whether the Gilbert land was enclosed by a fence; I didn't see any fence around it.

JOHN B. GARDIPEE, being duly sworn, testified as follows:

"My name is John B. Gardipee; I am twenty-seven years old; reside at St. Peters, Montana; have lived there since 1903; When I first went there I wasn't home all the time; I was single at the time and worked out all the time, pretty near; but the last

couple of years I have been home all the time. In the spring of 1903 I was out there off and on. I have heard of the Gilbert claim out there, and know just about where it is. Knew Gilbert about ten years ago. He was working for Mr. Cooper; was working for him in 1902, and 1903 or 1904; If I remember right, he was there in 1902 and 1903. I did a little work for Mr. Cooper in 1905. I saw Mr. Cooper driving around that section of the country in the years 1902, 1903 and 1904. I did not see any improvements on the Gilbert claim in 1904. I have been over the claim. I have never seen a fence, chicken-house or corral on the claim.

CROSS EXAMINATION BY MR. WALSH:

I don't know what section the Gilbert place is in. I now know where the lines are. I did not know at the previous time. I don't know how long Gilbert worked for Mr. Cooper.

WILLIAM BELGARDE, being duly sworn, testified as follows being interrogated by MR. SKINNER:

"My name is William Belgarde. I am twenty-six years old, live at St. Peter's Mission, and have lived there all my life. I know Mr. Cooper; have known him for eight or ten years. And I am acquainted with Mr. Gilbert. I took up a homestead there. I was out to Mr. Cooper's, and he asked me why I didn't take up a homestead, he showed me a piece of ground there, and I told him that I would take it up. I went to Great Falls to make out

the papers. Mr. Cooper went with me. I don't remember who made out the papers. I don't recollect whether I signed any papers or not. Nobody gave me a description of the land. Mr. Cooper just showed me the land when we got there, but that wasn't the land that I filed on. It was another piece of ground. I made just one filing. I was mistaken in the land. That was on this open piece of land and that is what I intended to file on. I didn't know it until I proved up. I guess Cooper gave the Receiver of the land office the money. I think he paid for making out the papers. I never paid out anything. Cooper gave me back the filing papers when I made the relinquishment. I made the relinquishment about three years ago.

CROSS EXAMINATION BY MR. WALSH:

I filed on a piece of land, and afterwards relinquished it. That is all there is about the homestead entry.

It was thereupon admitted that the notice of intention to make final proof was published in the usual form and for the usual period, and the affidavit of publication filed; that patent had been issued for the land in the usual form, on the date mentioned, and that the usual affidavit of homestead entry had been made, and that the land was thereafter purchased by and conveyed to the defendant Cooper.

Thereupon plaintiff introduced in evidence the testimony of Charles Gilbert, and his witnesses,

Charles Wise, and William Mahaffey, in making final proof; which testimony is as follows:

(TESTIMONY OF CHARLES WISE, FINAL
PROOF WITNESS):

Charles Wise, being called upon as witness in final proof, testified as follows:

Q. 1. What is your name, age and Post Office address?

A. Charles Wise, Age 29 years, P. O. Cascade, Montana.

Q. 2. Are you well acquainted with the claimant in this case and the land embraced in his claim?

A. Yes, with both.

Q. 3. Is said tract within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

A. No.

Q. 4. State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal, or mineral land?

A. Grazing.

Q. 5. When did claimant settle upon the homestead, and at what date did he establish actual residence thereon?

A. In March 1899 settled, built house and established residence.

Q. 6. Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried, state the fact.)

A. Claimant has, he is unmarried.

Q. 7. For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

He has not been absent.

Q. 8. How much of the homestead has the settler cultivated, and for how many seasons did he raise crops thereon?

A. 11½ acres in garden, balance in pasture, too rough to brake up.

Q. 9. What improvements are on the land, and what is their value?

A. House 16x20, chicken house, coral, 11½ acres broke, all fenced, worth \$300.

Q. 10. Are there any indications of coal, salines, or minerals of any kind on the homestead? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes?)

A. No.

Q. 11. Has the claimant mortgaged, sold, or contracted to sell, any portion of said homestead?

A. No.

Q. 12. Are you interested in this claim; and do you think the settler has acted in entire good faith in perfecting this entry?

A. No. Claimant has acted in good faith.

(Signed by his mark, and duly sworn to before the Receiver of the United States Land Office at Great Falls, Montana.)

(TESTIMONY OF WILLIAM MAHAFFEY,
FINAL PROOF WITNESS:)

Q. 1. What is your name, age, and post office address?

A. William Mahaffey, age 49 years, P. O. Cascade, Montana.

Q. 2. Are you well acquainted with the claimant in this case and the land embraced in his claim?

A. Yes, with both.

Q. 3. Is said tract within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

A. No.

Q. 4. State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal or mineral land.

A. Grazing land only.

Q. 5. When did claimant settle upon the homestead, and at what date did he establish actual residence thereon?

A. In March 1899, settled, built house and established residence.

Q. 6. Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried, state the fact.)

A. Claimant has, he is unmarried.

Q. 7. For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and if temporarily absent,

did claimant's family reside upon and cultivate the land during such absence?

A. He has not been absent.

Q. 8. How much of the homestead has the settler cultivated, and for how many seasons did he raise crops thereon?

A. 11½ acres in garden, balance in grass for pasture.

Q. 9. What improvements are on the land, and what is their value?

A. House 16x20, chicken house, corral all fenced, worth \$300.

Q. 10. Are there any indications of coal, salines, or minerals of any kind on the homestead? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes).

A. No.

Q. 11. Has the claimant mortgaged, sold, or contracted to sell, any portion of said homestead?

A. No.

Q. 12. Are you interested in this claim; and do you think the settler has acted in entire good faith in perfecting this entry?

A. No. Claimant has acted in good faith.

(Signed, and duly sworn to before the Receiver of the United States Land office at Great Falls, Montana.)

TESTIMONY OF CLAIMANT, CHARLES
GILBERT:

Q. 1. What is your name, age, and post office address?

A. Charles Gilbert, age 62 years, P. O. Cascade, Montana.

Q. 2. Are you a Native Born citizen of the United States, and if so, in what State or Territory were you born?

A. Born in New York, U. S. A.

Q. 3. Are you the identical person who made homestead entry No. 9785, at the Helena Land Office on the 1st day of December, 1898, and what is the true description of the land now claimed by you?

A. I am, and claim N 2 NW 4, Sec. 14., E 2 NE 4 Sec. 15. T. 19 N. R. 3 West.

Q. 4. When was your house built on the land and when did you establish actual residence there? (Describe said house and other improvements which you have placed on the land, giving total value thereof.)

A. In March 1899, built house and established residence, House 14x20 feet, chicken house, stable, all fenced, 1½ acres broke, worth \$300.

Q. 5. Of whom does your family consist; and have you and your family resided continuously on the land since first establishing residence thereon? (If unmarried, state the fact.)

A. I am unmarried, and have lived on the land since entry or since March 1899.

Q. 6. For what period or periods have you been

absent from the homestead since making settlement, and for what purpose; and if temporarily absent, did your family reside upon and cultivate the land during such absence?

A. Have not been absent.

Q. 7. How much of the land have you cultivated each season, and for how many seasons have you raised crops thereon?

A. One and one half acres for garden, balance in pasture, too rough to break.

Q. 8. Is your present claim within the limits of an incorporated town or selected site of city or town, or used in any way for trade or business?

A. No.

Q. 9. What is the character of the land? Is it timber, mountainous, prairie, grazing, or ordinary agricultural land? State its kind and quality, and for what purpose it is most valuable.

A. Grazing land only.

Q. 10. Are there any indications of coal, Salines, or minerals of any kind on the land? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes:)

A. No.

Q. 11. Have you ever made any other homestead entry? (If so describe the same)?

A. No.

Q. 12. Have you sold, conveyed, or mortgaged any portion of the land; and if so, to whom, and for what purpose?

A. No.

Q. 13. Have you any personal property of any kind elsewhere than on this claim? (If so, describe same, and state where the same is kept.)

A. No.

Q. 14. Describe by legal subdivisions, or by number, kind of entry, and office where made, any other entry or filing (not mineral), made by you since August 30, 1890.

A. None made.

(Signed, and duly sworn to before the Receiver of the United States Land Office at Great Falls, Montana.)

FINAL AFFIDAVIT OF CHARLES GILBERT:

I, Charles Gilbert, having made a Homestead entry of the N 2 NW 4 Sec. 14, E 2 NE 4 Section No. 15, in Township No. 19 N., of Range No. 3 West, subject to entry at Helena, Montana, under Section No. 2289 of the Revised Statutes of the United States, do now apply to perfect my claim thereto by virtue of Section No. of the Revised Statutes of the United States; and for that purpose do solemnly swear that I am a Native born Citizen of the United States; that I have made actual settlement upon and cultivated and resided upon said land since the 1st day of March 1899 to the present time; that no part of said land has been alienated, except as provided in Section 2288 of the Revised Statutes, but that I am the sole bona fide

owner as an actual settler; that I will bear true allegiance to the Government of the United States; and further, that I have not heretofore perfected or abandoned an entry made under the homestead laws of the United States.

(Signed, Charles Gilbert, and duly sworn to before the Register of the United States Land Office at Great Falls, Montana.)

RECEIVER'S FINAL RECEIPT, and NON-MINERAL AFFIDAVIT IN THE USUAL FORM ALSO INTRODUCED IN EVIDENCE.)

Thereupon Plaintiff rested.

DEFENDANT'S TESTIMONY:

FRANK D. COOPER, being duly sworn, and being examined by MR. WALSH, testified as follows:

"My name is Frank D. Cooper. I am the defendant in this suit. I have lived in Montana since the Fall of 1872. My business is stock business principally. I was in the legislature in territorial days, and I served on the Board of Commissioners two terms, for Cascade County. I know the land called the Gilbert land or homestead. I purchased that land from him, and paid him a money consideration for it. I purchased the land in good faith. At the time I purchased the land I did not have any knowledge that it was claimed that he had not complied with the law with reference to residence and improvements. I know Mr. Belgarde, and heard

his testimony with reference to his homestead entry. I had nothing to do with his making that entry, and it was not made under any arrangements with me. I know Thomas Short and heard his testimony. I did not make any arrangements with him for making his entry, and I did not make any arrangements with him with reference to a homestead for his daughter; I never saw his daughter that I remember of. I think he made inquiry of me about the land. Lots of people up there did that. I kept maps of that country and people often asked me about different pieces of land. Probably Belgarde did. I can't say positively. He may have asked me if there was any government land over there in that country. I don't remember any conversation that I had with him, but there has been a good many inquiries about government land, and there is at the present time about government land up there. I have sold the land which I purchased from Gilbert.

BY MR. SKINNER: I want to see the contract. I assume this land is described, Mr. Walsh, in this contract?

BY MR. WALSH: Yes. There is a long description, and I had to check it over to see that it was correctly described.

BY MR. SKINNER: If your Honor please, all this testimony with reference to the sale of lands is objected to on the ground that the agreement is dated, December 13, 1909; that the records of the clerk of the United States Circuit Court for the Dis-

trict of Montana show that the bill of complaint was filed in the Clerk's office on the 7th day of December, 1909; I think the contract should be introduced in evidence. It may be made a part of the record as an exhibit.

Contract offered and received in evidence is as follows:

AGREEMENT.

THIS AGREEMENT, made and entered into this 13th day of December, A. D., 1909, by and between Frank D. Cooper, and Alice G. Cooper, his wife, both of Cascade, County of Cascade, Montana, parties of the first part, and Geo Heaton of Perry, Dallas County, Iowa, party of the second part;

WITNESSETH:

That the parties of the first part have this day sold to the party of the second part, subject to the terms of this agreement, twenty-one thousand eight hundred and forty (21,840) acres of land, more or less according to the Government survey, situate in Cascade and Lewis and Clark Counties, Montana, and more particularly described in Exhibits, A, B, C, D, and E, hereto attached and made a part hereof.

The party of the second part agrees to pay for said lands at the rate of Five and 70/100 Dollars (\$5.70) per acre in the following manner, to-wit:

Twenty Thousand (\$20,000.00) Dollars on or before thirty days after receipt at the office of the

second part at 219 Gilfillan Block, St. Paul, Minnesota, of an abstract compiled by a reliable abstractor, showing a right to such title, to all the property herein sold except two thousand (2000) acres in the parties of the first part, as will enable the first parties to convey the said property according to this agreement, and the parties of the first part agree to obtain title to the said two thousand acres excepted and furnish perfect abstract with reasonable diligence;

Twenty-five Hundred Dollars (\$2,500.00) at the signing hereof, receipt whereof is hereby acknowledged. Said amount is to be paid by drawing on the second party through a bank designated by Frank D. Cooper, and this agreement to be mailed by said bank to the second party for his signature upon the return of such draft paid;

Ten Thousand Dollars (\$10,000.00) on July, 1, 1910.

Fifteen Thousand Dollars (\$15,000.00) on October 1, 1910.

It is agreed that the second party may have an extension of the time in which to make the last mentioned payment up to January 1, 1911, if he so desires, and in case of the exercise of this right of extension said payment shall draw interest at the rate of eight per cent per annum during such extension;

The balance shall be paid in five annual installments payable on October 1 of each year after October, 1910.

The deferred payments shall not draw interest till

after October 1, 1910, except during such extension of time of payment as hereinbefore mentioned.

From and after October 1, 1910, the deferred payments shall draw interest at the rate of six per cent per annum, subject to the exceptions hereinafter mentioned.

The second party may have an extension of not more than ninety days after the due date of each payment after October 1, 1910, in which to make said payment, and in case of the exercise of this right of extension, or any part thereof, the second party shall pay interest on such payment at the rate of eight per cent per annum during the period of such extension.

The first party is to remain in possession of said premises till August 1, 1910, at which time possession is to be surrendered to the second party or to his agents, provided the second party has fulfilled the portions of the contract to be performed by him prior to said date.

The second party is to have the right to enter upon said premises at any time hereafter for the purpose of surveying and carrying on such engineering work as he may desire.

The second party is to have the right to crop any portion of said premises during the year 1910, which has heretofore been cultivated.

The first party agrees to irrigate the wild and tame hay, if possible, during the year 1910, up to August 1 of said year.

Upon the fulfillment of the terms of this agree-

ment by the second party, the first party agrees to convey to the second party, all lands set out in Exhibit "A" hereto attached, and all lands set out in Exhibit "B" hereto attached to which said first party has obtained or can obtain, deed from the Northern Pacific Railway Company, and all lands set out in Exhibit "D" hereto attached, subject to the terms of this agreement.

All lands conveyed to the second party under this agreement shall be conveyed in fee simple by Warranty deed free from reservations and incumbrances.

The first parties warrant that the lands set out in Exhibit "B" hereto attached, are under contract between Frank D. Cooper and the Northern Pacific Railway Company bearing date January 18, 1909. The first parties agree to fulfill the obligations of Frank D. Cooper to the Northern Pacific Railway Company as set out in said contract dated January 18, 1909. The first parties agree to use their best efforts to obtain deeds from the Northern Pacific Railway Company to the property set out on Exhibit "B."

It is agreed that the first parties will convey to the second party, by similar warranty deed as hereinbefore mentioned, all property set out in Exhibit "B" to which they obtain deeds, or can obtain deeds, from the Northern Pacific Railway under said contract of January 18, 1909. It is agreed that should the first parties be unable to obtain deeds from the Northern Pacific Railway Company

to some of the property set out in Exhibit "B", after the fulfillment of the obligations of Frank D. Cooper under said contract of January 18, 1909, then and in that case said first parties are not required to convey to the second party such property set out in Exhibit "B" as they are unable to obtain deeds to from said Northern Pacific Railway Company, and the second party is not required to pay for such property not conveyed.

It is agreed that the first parties will not permit any of the wild or tame hay to be grazed upon between May 15 and up to August 1, 1910, and that the second party shall have such hay crop with the right to cut and put up the same when desired.

The first parties agree to use their best efforts to speedily obtain clear title to the property set out in Exhibit "D", and to convey the same to the second party under this agreement when title is obtained. If title cannot be obtained, then said first parties are not required to convey the same to the second party.

The first parties agree to deliver possession of said premises to the second party on August 1, 1910, in their present condition of repair, usual wear and tear and action of the elements excepted.

The first parties agree to assign to the second party, or persons designated by him, at the time of the delivery of possession of said premises, all State leases on the property set out in Exhibit "C" hereto attached.

The first party agrees to make all payments ac-

cruing on State leases on the property set out in Exhibit "C" prior to the delivery of possession of said premises.

The first parties agree to pay the taxes on the premises for the time they remain in possession of the same.

The first parties agree to pay the second party interest on all money paid prior to the delivery of possession of the premises at the rate of six per cent per annum, said interest to be deducted by the second party from the next payment due to the first parties from the second party after possession is delivered.

The first parties are to furnish the second party an abstract of title to all water rights conveyed under this agreement, which water rights are as per Exhibit "E" hereto attached. Said abstract of said water rights is to be furnished at the same time that the abstract to the other property is furnished, and shall show title to said water rights in the first parties as set out in Exhibit "E" hereto attached, and said first parties agree to convey said water rights when said land is conveyed.

It is agreed that time is the essence of this contract and that upon the failure of the second party to make any of the payments of principal or interest at the time and in the manner as herein set out, then and in that case the first parties at the option, may, upon sixty days' notice to the second party, declare this contract forfeited and they may return into possession of said premises, and that all pay-

ments made under this contract shall be forfeited to the parties of the first part, and this contract shall become void and of no effect.

All payments to be made under this contract are to be made to the Great Falls National Bank, Great Falls, Montana, to the credit of Frank D. Cooper, and payment by check shall constitute a payment provided the said check is honored in the usual course of business.

Interest which is to be paid under this contract is to be paid on each payment at the time that payment is made.

This agreement is made in triplicate and executed in duplicate, one original with Frank D. Cooper and Geo. Heaton, and one copy with John Marshall.

(Signed) FRANK D. COOPER.
ALICE G. COOPER.
GEO. HEATON.

Witness for their Signature:

JOHN MARSHALL,
Twodot, Mont.

Witness for first two signatures:

MELVIN ROWE.

Witness as to Geo. Heaton.

JAMES DENE GRE.

(Duly Acknowledged.)

Exhibit "A" mentioned contains a description, with other lands, of the N 2 NW 4 of Section 14, and the E 2 NE 4 of Section 15, Township 19 North, Range 3 West, being the lands involved in this action.

Exhibit "B" contains a list of the unpatented lands purchased from the Northern Pacific Railway Company.

Exhibit "C" contains a description of the lands leased from the State of Montana.

Exhibit "D" contains a description of other lands.

Exhibit "E" contains a description of water rights.

Witness continues:

Q. Who has got possession of these lands now?

A. Oh, it is Barth, and Ross and King.

BY MR. WALSH: I will ask leave to withdraw the Exhibit and make a copy of it.

BY THE MASTER: Very well, you may submit a copy.

Cooper: That was A. H. Barth, J. R. King and Thomas Ross.

CROSS EXAMINATION BY MR. SKINNER.

As near as I can remember, I moved into that township in 1876. I don't think that I took up a homestead at that time, think, it was a little later on. I don't know when I took it up, but it was two or three years later I should judge. I was born in April

1851. We have lived there continuously since the time we moved there in 1879, excepting that my family lived in Helena for a while, and we have lived in Great Falls for the purpose of sending the children to school; but my home has been there continuously. In the year 1899, I don't remember whether I was there or not. I was there probably from time to time, but whether or not it was continuously in that year I couldn't say. During that time I was engaged principally in the sheep business, and also cattle. And during that time I employed a great many shepherders and other men to look after my sheep, up to the year 1905. Mr. Gilbert worked for me, but I can't state exactly when. I didn't keep any books of my business, but I kept a time book. I know where the Charles Gilbert land is in a general way. I think I was over the land a long time before the final proof was made. I don't know whether I can see that land from the Crown Butte Ranch or not. I was up there but not very often. At that time I didn't live around in there. I was in business on Birch Creek, and I expect that along about that time I was down at Glasgow, and sometime along in there I was on the board of commissioners and building that court house there at Great Falls, and was away a good deal; during the years 1902 and 1903, Gilbert lambled a bunch of sheep along up there. There might have been sheep there, and they might have used the sheds and corrals. There was running water there. We frequently used any shed or corral we could around

there during storms. The sheep might have been there and I might have used his corrals; I couldn't say. I did not go around to look at the sheep, or over those lands very much. My foreman generally looked after supplying the camps and those bunches. I don't remember of being up there in 1902 and 1903 or 1904. I did not have any interest up there at that time. I have been through there and I know that it is a rough country. The Crown Butte Ranch is away east of it, towards Cascade. The cabin is only about a mile from the Gilbert land. It is up in the canyon there, in a rocky canyon. Of course that land is government land; it has never been filed on. I don't remember advancing any money to Gilbert to make commutation proof with. If they had any money coming I gave it to them. I never advanced any money to them. I have lent him money. I do not remember of having any talk with Gilbert at the time he made his filing, or of going with him to Great Falls. I don't remember having any talk with Gilbert about making an entry unless it was in a general way. He was an old soldier, and he thought he had some rights. He had a claim, and he wanted a little place down there where he could run his horses; he had some horses; he finally traded them off for cattle. I don't remember any conversation with Short. There was conversations about land in a general way all the time, but I don't remember any conversation about taking up any. He might have talked with me along that line. I might have asked him what kind of claim he was

looking for—something of that kind. I don't remember having papers made out for him. And I do not remember of being present at the land office with him when he signed the papers. I do not remember seeing his daughter at all, and I do not remember talking with Mr. Short about his daughter taking up some land. I do not remember paying for the making of the papers, and the filing fees for Mr. Short and his daughter. I never offered Short or any body else one hundred dollars or any other consideration in that way. I had no conversation with Mr. Short as he testified. He may have asked me a question about where was the land, the same as a great many others do. If I pointed it out I would have been on the land. That land there is some distance away, some four or five or six miles. I don't think he knows where the ground is today. He was just talking to be talking. I don't remember paying his filing fees. I know I didn't pay them. If he was working for me he might have got the money. If it was paid it was charged up to him. If he got the money he would have sense enough to know that it was charged up to him, but I don't know how he got the money. If he got any money from me it was charged up to him.

Barth, Ross and King are not the men who purchased the land from me. They have leased it at present from Heaton. This agreement conveys twenty-one thousand eight hundred and forty-eight acres of land, and that is all I own in that vicinity. I bought about fourteen thousand acres from the

Northern Pacific Railroad Company.

RE-DIRECT EXAMINATION BY MR. WALSH:

The home ranch is about seven or nine miles from the Gilbert land. I should judge it is about a mile or a mile and a half from the Crown Butte Ranch to the Gilbert land. I have been away a good deal during these years. I always had a foreman in charge.

RE-CROSS EXAMINATION BY MR.
SKINNER:

I know that I didn't pay the filing fees for Mr. Short or his daughter. Some one might have borrowed the money or something of that kind, but I never paid their filing fees. That is a long while ago to remember these conversations. I don't think I would give anybody money to file on a piece of land—a saloon keeper.

(And the foregoing is all the evidence that was introduced.)

And thereafter the court filed its opinion in words and figures following, to-wit:

IN THE DISTRICT COURT OF THE UNITED
STATES, DISTRICT OF MONANA.

UNITED STATES OF AMERICA,

vs.

No. 948.

FRANK D. COOPER and GEO.
HEATON.

Herein, the Court finds that for the period of eighteen months immediately preceeding final proof, Gilbert, entryman of the land involved, had no house, fence nor other improvements upon said land, did not reside upon nor improve nor cultivate the same, nor any or either of them; that defendant Cooper knew the foregoing facts when he purchased said land from Gilbert, the said entryman; that said defendant did not pay a valuable consideration therefor. And therefrom the Court concludes that the final proof of said Gilbert upon said land was false and fraudulent, was believed and relied upon by complainant and induced issuance of the patent here involved; that defendant Cooper is not a bona fide purchaser of said land; that cancellation of said patent has become impracticable since suit brought; that complainant is entitled to the relief of damages against defendant Cooper in the value of the land, \$5.70 per acre, with legal interest from December 13, 1909, and all costs; that unless paid by defendant Cooper, defendant Heaton shall pay the amount thereof to complainant from the unpaid purchase money owing by defendant Heaton to defendant Cooper upon his contract of purchase of said lands

when made a party hereto and appearing herein, such payment to discharge said purchase price to the extent thereof; that complainant have a lien therefor upon the land involved, and foreclosure thereof. And decree accordingly will be entered.

January 20, 1914.

BOURQUIN, J.

Now comes the defendant, Frank D. Cooper, and presents the foregoing as his Statement on Appeal, and moves that the same be approved by the Court.

JAMES A. WALSH,

Solicitor for the Defendant,

Frank D. Cooper.

I, the undersigned, Judge of the above named Court, do hereby certify that the foregoing Statement of Record on Appeal is true, complete, and properly prepared, and the same is therefore hereby approved by the Court.

Dated this 15th day of July, A. D., Nineteen Hundred and Fourteen.

GEO. M. BOURQUIN,

Judge.

(Endorsed: Filed July 15, 1914. Geo. W. Sproule, Clerk.)

And thereafter, the defendant, Frank D. Cooper, served and filed the following:

(TITLE OF COURT, TITLE OF CAUSE.)

NOTICE OF LODGEMENT OF TRANSCRIPT
ON APPEAL.

No. 948.

To the above named complainant, and Mr. B. K. Wheeler, United States Attorney for the District of Montana, its solicitor, and Mr. S. C. Ford, Assistant United States Attorney, and to the defendant, George Heaton, and Messrs. Day and Mapes, his Solicitors:

YOU AND EACH OF YOU WILL PLEASE
TAKE NOTICE:

That the statement of record on Appeal of the Defendant, Frank D. Cooper, in the above entitled action has been lodged, and is now in the office of the clerk of the above named Court.

AND YOU WILL FURTHER TAKE NOTICE:
That at the United States Court Room in the City of Helena, Montana, on the Twenty-second day of June, Nineteen Hundred and Fourteen, at the opening of Court, on that day, or as soon thereafter as counsel can be heard, the undersigned will ask the Court to approve the said Statement on Appeal, so prepared and lodged with the Clerk as aforesaid.

Dated this 11th day of June, A. D., Nineteen Hundred and Fourteen.

JAMES A. WALSH,
Solicitor for the Defendant,
Frank D. Cooper.

Service of the foregoing notice accepted and copy thereof received this eleventh day of June, 1914.

B. K. WHEELER,

United States Attorney for the District of
Montana and Solicitor for the complain-
ant.

DAY & MAPES,

Solicitors for Defendant George Heaton.

And thereafter the defendant, Frank D. Cooper served and filed the following:

(TITLE OF COURT, TITLE OF CAUSE.)

No. 948.

NOTICE OF SUMMONS AND SEVERANCE.

TO THE ABOVE NAMED DEFENDANT,
GEORGE HEATON, and MESSRS. DAY
AND MAPES, his Solicitors:

YOU AND EACH OF YOU WILL PLEASE
TAKE NOTICE:

That the defendant, FRANK D. COOPER, in the above entitled action, intends to appeal to the United States Circuit Court of Appeals, for the Ninth Circuit, from the judgment and decree made, given and entered by the above named court in the above entitled cause, and filed on the 28th day of January, Nineteen Hundred and Fourteen, and the said defendant, Frank D. Cooper, hereby requests that you join with him in the said appeal, and upon your failure to so join with him in said appeal, that he will prosecute the said appeal alone.

JAMES A. WALSH,
Solicitor for defendant,
Frank D. Cooper.

Service of the foregoing notice admitted and copy thereof received this twenty-fifth day of June, Nineteen Hundred and Fourteen, and the said George Heaton hereby refuses to join in said appeal.

DAY & MAPES,
Solicitors for the Defendant,
George Heaton.

Copy of the foregoing received, June 26th, 1914.

B. K. WHEELER,
U. S. Attorney.

Endorsed: Filed June 26, 1914. Geo. W. Sproule,
Clerk.

And thereafter the Defendant, Frank D. Cooper, served and filed the following:

(TITLE OF COURT, TITLE OF CAUSE.)

No. 948.

NOTICE.

To the above named defendant, George Heaton, and
Messrs. Day and Mapes, his Solicitors:

YOU, AND EACH OF YOU WILL PLEASE
TAKE NOTICE:

That at the court room in the City of Helena, Montana, on the Second day of July, Nineteen Hundred and Fourteen, at the opening of Court on that day, or as soon thereafter as counsel can be heard, the undersigned will call up the motion hereto an-

nexed and herewith served upon you.

JAMES A WALSH,
Solicitor for the defendant,
Frank D. Cooper.

Service of the foregoing notice admitted and copy thereof, and copy of motion received this 26th day of June, A. D., Nineteen Hundred and Fourteen.

DAY & MAPES,
Solicitors for the defendant,
George Heaton.

B. K. WHEELER,
United States Attorney for the
District of Montana.

Endorsed: Filed June 26th, 1914. Geo. W. Sproule, Clerk.

(TITLE OF COURT, TITLE OF CAUSE.)

No. 948.

MOTION.

Now comes the defendant, Frank D. Cooper, and moves the court for an order permitting him to prosecute alone an appeal from the judgment and decree made, given and entered in the above entitled action, and filed on the Twenty-eighth day of January, A. D., Nineteen Hundred and Fourteen, for the reason that his co-defendant, George Heaton, refuses to join in the appeal.

JAMES A. WALSH,
Solicitor for the Defendant,
Frank D. Cooper.

Endorsed: Filed June 26, 1914. Geo. W. Sproule, Clerk.

And thereafter the Court made and entered the following:

(TITLE OF COURT, TITLE OF CAUSE.)

No. 948.

ORDER OF SEVERANCE.

A judgment having been on the Twenty-eighth day of January, A. D., Nineteen Hundred and Fourteen, duly made, given and entered in the above entitled cause against the above named defendants, and the defendant, Frank D. Cooper, having on the 25th day of June, A. D., Nineteen Hundred and Fourteen, served on his co-defendant, George Heaton, a summons, and a notice of his intention to appeal from the said judgment, and requesting the said George Heaton to join with him in said appeal, and notifying him that upon his failure to so join, that he, the said defendant Frank D. Cooper, would prosecute the said appeal alone; and the said defendant, George Heaton, having in writing declined to join in the said appeal, and the said defendant, Frank D. Cooper, having on the 26th day of June, A. D., Nineteen Hundred and Fourteen served upon his co-defendant, George Heaton, notice of motion of severance and that he, the said Frank D. Cooper be allowed to prosecute the said appeal alone, and which notice and motion was likewise, on said date, served upon the complainant; and the said motion coming on for hearing the

Second day of July, Nineteen Hundred and Fourteen, and the court having duly considered the same;

IT IS THEREFORE ORDERED: That the interest of the said defendant, Frank D. Cooper, be, and the same is hereby severed from the defendant, George Heaton, and the said defendant, Frank D. Cooper be allowed to prosecute the said appeal alone.

IT IS FURTHER ORDERED: That this order and the motion and notices above mentioned be made a part of the record on appeal.

Dated this Second day of July, A. D., Nineteen Hundred and Fourteen.

GEORGE M. BOURQUIN,
JUDGE of the above named Court.

Due service of the foregoing is hereby admitted this Second day of July, A. D., Nineteen Hundred and Fourteen.

B. K. WHEELER,
United States Attorney for the
District of Montana.

DAY & MAPES,
Solicitors for the defendant,
George Heaton.

Endorsed: Filed July 2, 1914. Geo. W. Sproule,
Clerk.

And thereafter the defendant Frank D. Cooper served and filed the following:

(TITLE OF COURT, TITLE OF CAUSE.)

No. 948.

PETITION FOR APPEAL:

To the Honorable, the Judge of the above named Court:

The above named defendant, Frank D. Cooper, conceiving himself to be aggrieved by the decree entered herein on the Twenty-eighth day of January, A. D., Nineteen Hundred and Fourteen, in the above entitled proceeding, does hereby appeal from said decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors which is filed herewith, and prays that an appeal be allowed and that a citation issue as provided by law, and that a transcript of the record and proceedings and papers upon which said decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

And your petitioner further prays that the proper order fixing the security to be required of him to perfect his said appeal be made.

JAMES A. WALSH,
Solicitor for Defendant,
Frank D. Cooper.

Due service of the foregoing is hereby admitted this Second day of July, A. D., Nineteen Hundred and Fourteen.

B. K. WHEELER,
United States Attorney for the
District of Montana.

DAY & MAPES,

Solicitors for the Defendant,

George Heaton.

Endorsed: Filed July 15, 1914. Geo. W. Sproule,
Clerk.

And at the same time the defendant Frank D. Cooper served and filed the following:

(TITLE OF COURT, TITLE OF CAUSE.)

No. 948.

ASSIGNMENT OF ERRORS.

The defendant, Frank D. Cooper, in the above entitled action, in connection with his appeal, hereby makes the following assignment of errors, which he avers occurred in this cause, to-wit:

I.

It was error for the court to hold and find that Charles Gilbert, entryman of the land involved, did not build any house upon said land, and did not reside thereon, and did not fence the same, nor any or either of them prior to his final proof.

II.

It was error for the Court to hold and find that his, Gilbert's, improvements did not exceed One Hundred Dollars in value, and that the defendant Cooper knew the said facts, or any of said facts when he purchased the said land from Gilbert, or at any other time.

III.

It was error for the court to hold and find that the defendant Cooper knew of the facts or any of

the facts set forth in specific paragraphs Numbered One and Two, when he purchased the said land from Gilbert, or at any other time.

IV.

It was error for the court to hold and find that the defendant, Frank D. Cooper did not pay a valuable consideration for the land embraced in the Gilbert entry.

V.

It was error for the court to conclude, hold and find that the final proof of the entryman, Gilbert, was false and fraudulent, or that the complainant was induced to issue the patent herein involved by relying on any false or fraudulent statements.

VI.

I was error for the court to conclude, hold and find that the defendant Frank D. Cooper is not or was not a bona fide purchaser of said land.

VII.

It was error for the court to conclude, hold and find that the complainant is entitled to the relief of damages against the defendant Frank D. Cooper in the alleged value of the land, Five and 70/100 (\$5.70) Dollars per acre, as stated by the court, with legal interest from December 13th, Nineteen Hundred and Nine, amounting in all to Twelve Hundred and Twelve and 96/100 (\$1212.96) Dollars, and all costs.

VIII.

It was error for the court to conclude, hold and

find that the value of the land was or is Five and 70/100 (\$5.70) Dollars per acre, no evidence having been introduced as to value.

IX.

It was error for the court to conclude, hold and find that unless the said sum of Twelve Hundred and Twelve and 96/100 (\$1212.96) Dollars was paid by the defendant Frank D. Cooper, that the defendant George Heaton shall pay the amount thereof to complainant from the unpaid purchase money owing by the defendant Heaton to the defendant Frank D. Cooper upon his contract of purchase of said lands when made a party hereto and appearing herein.

IX.

It was error for the court to conclude, hold and find that such payment, when made by the said Heaton, should be a discharge of said purchase price to the extent thereof.

X.

It was error for the court to conclude, hold and find that the complainant has a lien for the said sum of Twelve Hundred and Twelve and 96/100 (\$1212.96) Dollars upon the land involved, and was entitled to the foreclosure thereof.

XI.

It was error for the court to conclude, hold and find that the complainant was entitled to a decree according to the findings and conclusions of the Court.

XII.

It was error for the court to order, adjudge and decree that the complainant have and recover from the defendant Frank D. Cooper the sum of Nine Hundred and Twelve (\$912.00) Dollars, with interest from the 13th day of December, A. D., Nineteen Hundred and Nine, (1909), amounting in all to the sum of Twelve Hundred and Twelve and 96/100 (\$1212.96) Dollars, together with the costs and taxes, for that, no issue was raised in the pleadings, and no evidence was introduced concerning the value of the land.

XIII.

It was error for the court to order, adjudge and decree that unless the said amount, Twelve Hundred and Twelve and 96/100 (\$1212.96) Dollars, and costs, be paid by the defendant, Frank D. Cooper, that the defendant, George Heaton, pay the same to the complainant from the unpaid purchase money claimed to be owing by the said George Heaton to the defendant Frank D. Cooper upon his contract for the purchase of the lands.

XIV.

It was error for the court to order, adjudge and decree that upon such payment being made by the said defendant George Heaton it shall discharge the purchase price to the extent thereof.

XV.

It was error for the court to order, adjudge and

decree that the complainant have a lien upon the lands and premises mentioned in the complaint, for the sum of Twelve Hundred and Twelve and 96/100 (\$1212.96) Dollars, and the costs, and that it is entitled to the foreclosure thereof.

WHEREFORE: The said defendant, Frank D. Cooper, prays that the said judgment of the said District Court of the United States, for the District of Montana, rendered in the said suit be reversed.

JAMES A. WALSH,
Solicitor of the Defendant,
Frank D. Cooper.

Due service of the foregoing assignment of errors is hereby admitted this 15th day of July, A. D., Nineteen Hundred and Fourteen.

B. K. WHEELER,
United States Attorney for the
District of Montana.

DAY & MAPES,
Solicitors for the Defendant,
George Heaton.

Endorsed: Filed July 15, 1914. Geo. W. Sproule,
Clerk.

And thereupon the court made and entered the following:

(TITLE OF COURT, TITLE OF CAUSE.)

No. 948.

ORDER ALLOWING APPEAL.

On this day came the defendant, Frank D. Cooper and presented his petition for appeal, and his assignments of error accompanying the same, which petition, upon consideration thereof, was allowed, and the court allowed the appeal to the United States Circuit Court of Appeals for the Ninth Circuit, upon filing a bond in the sum of Fifteen Hundred Dollars, with good and sufficient security to be approved by the Court.

And it further appearing that the defendant, George Heaton was notified in writing to join in the said appeal, or to decline to join in such appeal; and it further appearing that the said George Heaton has declined to join in the said appeal, and has severed himself from the defense of this cause, the said defendant Frank D. Cooper is hereby granted his appeal as aforesaid, and his interest is severed in said appeal from the other defendant, George Heaton, herein.

Dated this 15th day of July, A. D., Nineteen Hundred and Fourteen.

GEO. M. BOURQUIN,
JUDGE of the above named Court.

Due service of the foregoing is hereby admitted this 15 day of July, A. D., Nineteen Hundred and Fourteen.

B. K. WHEELER,
United States Attorney for the
District of Montana.

DAY & MAPES,
Solicitors for the defendant,
George Heaton.

Endorsed: Filed July 15, 1914. Geo. W. Sproule,
Clerk.

And thereupon, the defendant, Frank D. Cooper,
executed and filed the following:

(TITLE OF COURT, TITLE OF CAUSE.)

No. 948.

BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS:
That I, FRANK D. COOPER, as principal, and
J. L. TRUSCOTT and E. D. COLEMAN of Glas-
gow, Montana, as sureties, are held and firmly bound
unto the United States of America, in the sum of
Fifteen Hundred (\$1500.00) Dollars, lawful money
of the United States of America, for the payment of
which, well and truly to be made, we do hereby bind
ourselves, jointly and severally, and each of our
heirs, executors, administrators, successors and as-
signs, firmly by these presents.

Sealed with our seals, and dated this 6 day of
July, A. D., Nineteen Hundred and Fourteen.

WHEREAS, the above named defendant,
FRANK D. COOPER, has prosecuted an appeal to
the United Circuit Court of Appeals for the Ninth

Circuit, to reverse the decree rendered in the above entitled cause in the United States District Court for the District of Montana, made and entered on the Twenty-eighth day of January, A. D., Nineteen Hundred and Fourteen.

NOW, THEREFORE, the condition of this obligation is such that if the above named defendant Frank D. Cooper, shall prosecute the said appeal to effect and shall answer all damages and costs that may be awarded against him if he fails to make good his appeal then the above obligation is to be void; otherwise to remain in full force and virtue.

It is expressly agreed by the said J. L. Truscott and E. D. Coleman, the sureties above named, that in case of a breach of any condition of this bond, the court may, upon notice of not less than ten days, to the said J. L. Truscott and E. D. Coleman, proceed summarily in this action to ascertain the amount which such sureties are bound to pay on account of such breach, and render judgment against them for said amount and award execution therefor.

IN TESTIMONY WHEREOF: We have hereunto set our hands and seals this 6th day of July, 1914.

FRANK D. COOPER. (SEAL)

J. L. TRUSCOTT. (SEAL)

E. D. COLEMAN. (SEAL)

STATE OF MONTANA,
COUNTY OF VALLEY,—ss.

J. L. TRUSCOTT and E. D. COLEMAN, the sureties whose names are subscribed to the above undertaking, being severally duly sworn, each for himself, and not for the other says: That he is a resident and freeholder or householder in the said County of Valley, State of Montana, and that he is worth the sum in the said undertaking, specified over and above all his just debts and liabilities, exclusive of property exempt by law from execution.

J. L. TRUSCOTT. (SEAL)

E. D. COLEMAN. (SEAL)

Subscribed and sworn to before me this 6th day of July, A. D., Nineteen Hundred and Fourteen.

C. D. ARNOLT,

Notary Public in and for the State of Montana; residing at Glasgow, Montana.

(SEAL.)

My Commission expires Jan. 26, 1915.

The foregoing bond is hereby approved this 15th day of July, A. D., Nineteen Hundred and Fourteen.

GEO. M. BOURQUIN,

JUDGE of the above Named Court.

Endorsed: Filed July 15, 1914. Geo. W. Sproule, Clerk.

And thereupon the court approved said bond, and issued the following:

(TITLE OF COURT, TITLE OF CAUSE.)

No. 948.

CITATION.

UNITED STATES OF AMERICA:

TO THE UNITED STATES OF AMERICA, Complainant and Appellee, and to B. K. WHEELER, United States Attorney, Solicitor for Appellee, and to GEORGE HEATON, defendant, and MESSRS. DAY & MAPES, his Solicitors, GREETING:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals, for the Ninth Circuit, at the City of San Francisco, State of California, within thirty days from the date hereof pursuant to an appeal filed in the office of the Clerk of the District Court of the United States for the District of Montana, wherein Frank D. Cooper is the appellant, and the United States of America and George Heaton are the Appellees, to show cause, if any there be, why the decree in said appeal mentioned should not be corrected and reversed, and speedy justice should not be done to the parties on their behalf.

WITNESS, the Honorable George M. Bourquin, Judge of the United States District Court, for the District of Montana, this Fifteenth day of July, A. D., Nineteen Hundred and Fourteen.

GEO. M. BOURQUIN,

Judge of the District Court for the
District of Montana.

Due and personal service of the above citation is hereby admitted, and copy received and acknowledged this Fifteenth day of July, A. D., Nineteen Hundred and Fourteen.

B. K. WHEELER,
United States Attorney.
DAY & MAPES,
E. C. DAY & T. D. MAPES,
Solicitors for the Defendant,
George Heaton.

Endorsed: Filed July 15, 1914. Geo. W. Sproule,
Clerk.

And thereafter the defendant Frank D. Cooper filed the following:

(TITLE OF COURT, TITLE OF CAUSE.)

No. 948.

PRAECIPE.

TO THE HONORABLE B. K. WHEELER, UNITED STATES DISTRICT ATTORNEY FOR THE DISTRICT OF MONTANA, Solicitor for the complainant, and to MESSRS. DAY & MAPES, Solicitors for the Defendant, George Heaton:

THE UNDERSIGNED, Solicitor for the defendant and appellant, herein, Frank D. Cooper, hereby files and serves upon you his praecipe, in conformity with the rules of Court, hereby indicating the portions of the record to be incorporated into the transcript on appeal herein, and which said por-

tions of said record you are hereby notified the said defendant and appellant will incorporate and include in the record on appeal. Said portions are as follows, to-wit:

A.

Judgment Roll, consisting of:

1. Bill of Complaint.
2. The Clerk's note following the Bill of Complaint.
3. The Subpoena.
4. The answer of the defendant, Frank D. Cooper, to the Bill of Complaint.
5. The Replication.
6. Order allowing Amendments to the Bill of Complaint.
7. The Notice, and Amendments to the Bill of Complaint.
8. The order to serve on the defendant George Heaton by publication.
9. Return of the Marshall.
10. Separate Answer of the defendant, George Heaton.
11. Replication to the Answer of the defendant, George Heaton.
12. The Decree.
13. The Certificate of the Clerk.

B.

The evidence introduced as incorporated in the statement of record on appeal.

C.

A memorandum of the documents introduced in evidence.

D.

A memorandum of the opinion of the Court.

E.

Defendant's notice to settle Bill of Exceptions.

F.

Certificate of Judge.

G.

Notice of Defendant Cooper's intention to appeal, and request to the defendant George Heaton to join in the appeal.

H.

Acceptance of service of the notice, and refusal to join in the appeal.

I.

Motion of Severance.

J.

Notice of Motion of Severance.

K.

Order of Severance.

L.

Petition for Appeal.

M.

Assignment of Errors.

N.

Order Allowing Appeal.

O.

Citation.

P.

Bond on Appeal.

Q.

This Praecipe.

R.

Insert the title of the cause in full in the Bill of Complaint.

S.

Omit the title of the court and cause in all subsequent papers and pleadings, excepting the statement, "Title of Court, Title of Cause."

T.

Omit the endorsements, excepting to state, "Filed," giving the date and the name of the clerk.

U.

Insert the acknowledgments of service of papers complete.

JAMES A. WALSH,

Solicitor for the defendant,

Frank D. Cooper.

TO GEORGE W. SPROULE, Clerk of the above
named Court:

You will please prepare the record on Appeal in the foregoing entitled action, and incorporate there-

in the papers and records set forth in the foregoing Praeceptum.

JAMES A. WALSH,
Solicitor for the Defendant,
Frank D. Cooper.

Due service of the foregoing admitted this 15th day of July, A. D., Nineteen Hundred and Fourteen.

B. K. WHEELER,
United States Attorney for the
District of Montana.

DAY & MAPES,
Solicitors for the defendant,
George Heaton.

Endorsed: Filed July 15, 1914. Geo. W. Sproule,
Clerk.

(TITLE OF COURT, TITLE OF CAUSE.)
CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA,
DISTRICT OF MONTANA.—ss.

I, George W. Sproule, Clerk of the United States District Court for the District of Montana, do hereby certify and return to the Honorable, the United States Circuit Court of Appeals, for the Ninth Circuit, that the foregoing volume, consisting of ¹⁰³~~107~~ pages, numbered consecutively from One to ¹⁰³~~107~~ inclusive, is a true and correct transcript of the pleadings, processes, final decrees, orders, testimony and all other proceedings had in said cause, and of the whole thereof as appears from the original files and records of said court in my custody as such clerk; and I further certify and return that I have annexed to said transcript, and included within said pages, the original citation issued in said cause; all the foregoing being included in the statement or final record herein as approved by the Judge of this court.

In Testimony Whereof: I have hereunto set my hand and affixed the seal of this Court, at Helena, Montana, this.....day of
....., A. D. Nineteen Hundred
and Fourteen.

.....
Clerk.

